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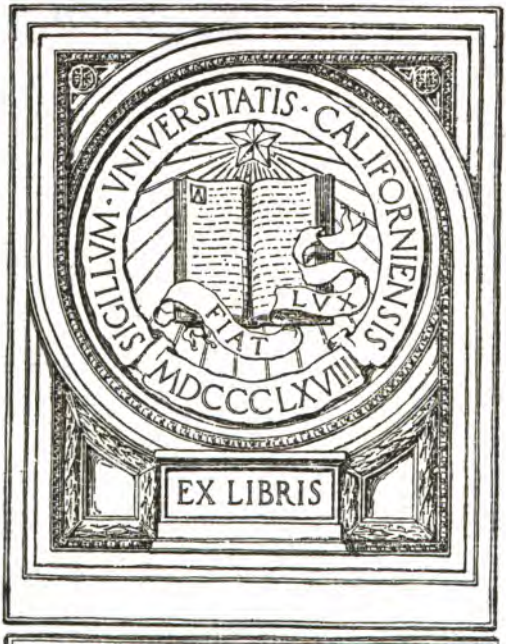

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TRADE UNION LAW AND CASES

A TEXT BOOK

RELATING TO

TRADE UNIONS AND TO LABOUR.

BY

HERMAN COHEN

OF THE INNER TEMPLE, BARRISTER-AT-LAW

AND

GEORGE HOWELL, F.S.S.

AUTHOR OF "THE CONFLICTS OF CAPITAL AND LABOUR;" "TRADE UNIONISM, NEW AND OLD;" "HANDY-BOOK OF THE LABOUR LAWS," ETC.

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PREFACE.

In the first and second editions of my Handy-Book of the Labour Laws, I said: "This is not intended as a text-book for lawyers, but as a guide-book for workmen." In the third edition, 1895, I said: "It was never designed as a text-book for the legal profession, it would have been presumptuous in me to aim at such distinction." That work, however, has been received and treated with generous forbearance by the profession of all grades, and by Justices of the Peace, by Stipendiary Magistrates, and even by Her Majesty's Judges. I cannot but feel grateful for such recognition and kindly treatment, for, after all, it was only the work of a layman, designed for the use of laymen.

During the twenty-five years which the Handy-Book of the Labour Laws has been before the public (it was first issued in 1876), I have hoped to see some work from the hands of a trained lawyer, which should be of such a character as to be regarded as a text-book to be quoted in the Courts. To have

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been asked to co-operate in such a work was a great compliment to me, and I was encouraged to comply not only by the cordial invitation of my coadjutor, but also by mutual friends to whom the project was communicated.

As to the necessity for such a work, it will be obvious to those who take an interest in the subject. No work has been published thereon since the year 1876, when Mr. Davis published his work. Three years prior to that date Mr. W. Guthrie published a work in Scotland, but that only dealt with the Trade Union Act, 1871. These works, however valuable at the time, are now out of date. All cases of significance have been decided since their publication. New points have arisen of grave importance during the last ten or twelve years, such as were scarcely contemplated at an earlier period; but no work has appeared dealing with the subject in its changed circumstances. The only book which filled the gap was the third edition of the Handy-Book of the Labour Laws, which appeared in 1895, and which probably would not have been published had some legal text-book been issued meanwhile.

Before the passing of the Trade Union Act in 1871, and of the "Labour Laws" in 1875, workmen were subject to criminal prosecution, and

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various Acts, or remnants of old laws or decisions in the Courts, and of the provisions of the Master and Servant Acts. Now they are mostly proceeded against by civil action in the civil Courts, a change for the better, which was the result of long years of agitation by the labour leaders, to whose efforts the change was due. But the cause of labour is not wholly free from danger of a serious kind. By means of injunctions, the men affected, and the unions to which they belong, run the double risk of being thwarted in a dispute while it is pending, and of ruinous litigation to contest the validity of any such injunction. Recent examples will be found in the notes and cases in support of this view.

Workmen generally, and especially the officers of trade unions and those denominated as labour leaders, should, as a matter of duty, strive to understand the law as applicable to labour, especially collective labour as represented by trade unions or other labour organisations. Ignorance of the law is not regarded as a valid excuse for any breach of the law, nor will it materially mitigate the penalties which such breach or offence entails. If the law be wrong, or unjust in its operation, workmen must endeavour to repeal or modify it. To ignore or break it only ends in disaster to all

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concerned. Actions at law, whether criminal or civil, always intensify the antagonisms of labour disputes. A rightful understanding of legal obligations will help to secure industrial peace. To all I would say: Labour has its rights as well as its duties, and capital has its duties as well as its rights.

G. H.

January, 1901.

My share in this little work sprang out of an attempt to collect all the *cases* on the subject, and I hope that they are all at least mentioned. This origin has sometimes affected the form of the book, for cases not turning on the construction of a particular section in a statute do not readily fall into their places in a commentary on an Act, and may have the appearance of being dragged in. It is hoped that the Index will be a sure guide to such cases.

As far as possible the reports are allowed to speak for themselves, at the risk, perhaps, of too liberal quotation.

The notation adopted for citing statutes is shorter than that in general use, and has been found convenient elsewhere.

H. C.

January, 1901.

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THE TRADE UNION ACTS, 1871 AND 1876.

INTRODUCTION.

Civil Rights of Workmen.—The present work is restricted to certain Acts which relate to Trade Unions as organised bodies, to Trade Unionists who are members of such bodies, and to other workmen, especially when they co-operate with Unionists in labour disputes, though at the time they happen to be Non-unionists. It is essential to bear this in mind, for, in cases arising out of labour disputes, workmen are too often treated in courts of law as though they had, in some way, forfeited their rights as citizens of the State, and who must be dealt with specially as persons in combination. This is frequently the case before justices of the peace, often by the stipendiary magistrates, sometimes by recorders, and sometimes, though less frequently of late, by Judges of the High Court. This treatment is in violation of the principles of the Common Law, and there is no justification for it under the Statute Law. Let

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it be clearly understood that workmen, whether Unionists or Non-unionists, have equal civil rights with all other citizens, unless the contrary is expressed by and in the Statute Law.

Workmen no longer under Combination Laws.—The reason why this obvious fact is often overlooked is, that workmen in combination were, up to 1824—25, under the ban of the law. Combinations were illegal, and all those in combination were liable to penalties under the Statute Law. But the Combination Laws are now repealed. Combinations are legal by express statutory enactment. Another reason is that formerly all associations of workmen for the purpose of regulating the hours of labour, wages, and conditions of employment, were deemed to be in restraint of trade.

Restraint of Trade.—The doctrine of "restraint of trade" was, it appears, not unknown to the Common Law. Nevertheless, it is a curious historical fact that its violation was general, constant, and continuous, under and by the Statute Law. But, of course, when the violation of a Common Law doctrine is sanctioned by statute, it is no longer an offence punishable by the Courts. "Restraint of trade" by Ordinance and by Regulation was the essence of the old Guild system. For centuries, such regulation by the Guilds had the force of Law, their ordinances being everywhere enforced.

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Under Edward III. was passed the Statute of Labourers, and thenceforward Statute Law attempted to do all that had been done under Guild ordinances, and often more. The 5 Eliz. c. 4, was little more than a consolidation of existing Acts, and the blending of them with still existing Guild ordinances, under one and the same statute. Trade and labour were restrained by ordinance and statute for centuries, but when workmen combined to mitigate their severity, the "doctrine of restraint of trade" was used to prevent them, and as a means of punishment. Even when the specific laws against combination were repealed, the doctrine survived, and is even now used in the workmen's charter—the Trade Union Act, 1871. The above facts deserve to be considered where the doctrine of "restraint of trade" is hurled at Trade Unionists, as though they were and had been the guilty parties in reference thereto.

Scope of the present Work.—The Acts herein specifically dealt with are five in number, viz.:—(1) Larceny and Embezzlement, commonly called the Recorder's Act, 1868; (2) the Trade Union Act, 1871; (3) the Trade Union Act, 1876; (4) the Employers and Workmen Act, 1875; (5) the Conspiracy and Protection of Property Act, 1875; and (6) the Conciliation Act, 1896. Two subsidiary Acts are also included, viz., the Falsification of Accounts Act, 1875, and the Trade

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Union (Provident Funds) Act, 1893. All the cases bearing upon each and all of these Acts are cited and explained in connection with the various sections of each Act.

The Combination Laws, Repeal of.—With respect to the Trade Union Acts, it is necessary to explain that the right of combination was conceded by the repeal of the Combination Laws, first in 1824 by 5 Geo. IV. c. 95, and then, in a slightly modified form, by 6 Geo. IV. c. 129, in 1825, the former being repealed, and the latter substituted therefor. But though combinations of workmen were no longer illegal, singularly enough the right to combine thus conceded did not carry with it the citizen's right of protection, as regards funds and property.

Unprotected Funds of Trade Unions.—Trade Unions, called by the earlier statutes combinations, were not accorded the ordinary safeguards enjoyed by all other associations not unlawful in their character, and hence were under the ban of the law, being practically without their pale. When, in 1854, Mr. Sotheron Estcourt obtained the appointment of a Select Committee, to consider a Bill which he had prepared, on the law relating to Friendly Societies, some representatives of Trade Unions and others had interviews with him, with the view of securing some protection to the funds of Trade Societies. As a result of those conferences the 44th clause in the Bill was introduced

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and carried, in the Act of 1855. This fancied security was obtained by the deposit of the Rules of Trade Unions with the registrar and justices of the peace. For ten years partial protection was obtained, but in 1866 the delusion of security was rudely dispelled by the decision of Lord Chief Justice Cockburn, in the case of *Hornby* v. *Close* (see p. 48 n.), a like decision being given in the case of *Farrer* v. *Close*. (See p. 51.) Those decisions left the Unions without protection, their funds being at the mercy of any dishonest official.

Protection of Funds Act, 1869.—Those decisions led to an organised agitation, on the part of the Labour leaders and Trade Union officials, during 1866—69, for an Act which should give security to the funds and property of Trade Unions. Eventually this was obtained by a temporary Act, passed in 1869, repealed by the Trade Union Act, 1871.

The preceding brief historical outline indicates the nature of the grievances of Trade Unions as organised bodies, and also the demands urged in their behalf for legal recognition and protection.

Grievances of Trade Unionists.—In addition, however, to the grievances of Trade Unions, as associated bodies of workmen, the members of those bodies—Trade Unionists—had specific grievances as individuals, namely, the curtailment of personal rights by reason of the fact that they acted in combination in matters relating to labour. The

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old doctrine of "restraint of trade" was applied to them. This expression is used in sect. 2 of the Trade Union Act, 1871, but it is there introduced to enact that the purposes of a Trade Union shall not be deemed to be unlawful by reason of the fact that they are "in restraint of trade," by which provision acts done by the members thereof are no longer criminal or unlawful in that respect.

Acts specially relating to Conduct of Workmen.—The Acts relating to the conduct of workmen are, some provisions in the Trade Union Act, 1871, the Employers and Workmen Act, 1875, and the Conspiracy and Protection of Property Act, 1875. The provisions in these statutes are in addition to those in general Acts, such as the Malicious Injuries to Property Act (24-5 V. 97), and to the common law. The cases which are cited in the following pages are those mainly which have occurred under the three Acts above named; but where other statutes are relied upon, or are quoted in support of the prosecution, and also where the Common Law is applied, the cases bearing thereon are cited. The object sought is to set forth the law in each case, showing at once what are the recognised rights of workmen, individually and in combination, and what are deemed to be offences, together with the penalties or punishments for any breach of the law, whether civil or criminal. There is a necessity for this, inasmuch as the

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decisions vary considerably, especially as regards infractions of the law by workmen. Severity in sentences is not now so common as it was. The worst instance of its kind was that on the gas stokers, in 1872. (See p. 120.)

I.—The Recorder's Act, 1868.

Object of the Act.—This Act, passed in 1868, is "An Act to amend the Law relating to Larceny and Embezzlement." The primary object of the Bill, as brought in by Mr. Russell Gurney, was to protect the partners in a joint or co-partnership concern. The original purpose of the measure doubtless was to provide better security of the property of co-partnerships in the commercial and trading world, many instances having occurred of ruin to a firm through the dishonesty of a single member, the others suffering by reason of defalcations, yet innocent of any complicity in the crime.

Application of Act to Trade Unions.—When the measure was before the House of Commons the attention of the Labour leaders was called to the provisions of the Bill, with the result that interviews took place between Mr. Russell Gurney and some of the workmen's representatives, respecting the measure. It was pointed out to him that the funds of Trade Unions were unprotected, and it was suggested that they were to all intents and purposes "joint beneficial owners" in the property.

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He was asked whether, in his opinion, the provisions of the Bill would apply to officers of Trade Unions in cases of embezzlement, they being joint owners of the property. He declared that the provisions would apply, such bodies coming within the expression "other joint beneficial owners," in the preamble to the Bill. They were advised, however, that, inasmuch as Trade Unions were then under a cloud, by reason of the then recent disclosures before the Royal Commission, 1867—9, not to take any public action which might affect the measure, and perhaps delay its enactment.

First Case under the Act.—The Bill was passed, and immediately a case was tried under the Act, *Regina* v. *Blackburn*, the prisoner being sentenced to imprisonment under it. (See p. 116.) Offences under the Act are of a criminal character, the punishment being imprisonment, unless express power is otherwise given in some other statute. Officers and members of Trade Unions may be tried under this Act, whether the Union is registered or not, the offence being an indictable one. But the money or property is not recoverable under this Act, nor can it be recovered if the offender is prosecuted under this Act. Registered Trade Unions, as a rule, prefer to proceed under the Trade Union Acts, by which they may recover the money, or the offender may be fined, or he may be imprisoned.

Recent Case under the Act.—It is important that

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this Act should be well known, because many Unions are still unregistered, and it is doubtful whether some of the "Labour Unions," Trades Councils, and other bodies can be registered under the Trade Union Acts. The Ilkstone and District Hosiery Union prosecuted a treasurer at Ilkstone Petty Sessions, on January 26th, 1894, for embezzlement under the Trade Union Acts, but failed to obtain a committal, because that body was not registered as a Trade Union, though the component bodies of it were registered. He was then prosecuted under the Recorder's Act, and was convicted and imprisoned.

Important cases under this Act are given in connection with the text of the statute. The Act does not apply to Scotland. Proceedings must be taken in the district in which the offence is committed.

(See the Recorder's Act, pp. 115—9.)

II.—Falsification of Accounts Act, 1875.

Nature and Severity of the Act.—The Falsification of Accounts Act, 1875, is a general Act, but it will apply to unregistered Trade Unions in cases where the official is a paid servant of the Union, as in most instances they are. In nearly all defalcations and embezzlements, falsification of the accounts is one of the methods employed. The provisions of this Act ought therefore to be known in connection with the Recorder's Act, especially as the penalties are of a criminal character, and are very severe. Such

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knowledge might have a deterrent effect where the official or officials are dishonestly inclined. They ought to understand what risks they run, and what punishments may be inflicted for offences of this kind. The offence of, "wilfully and with intent to defraud," destroying, altering, mutilating or falsifying "any book, paper, writing, valuable security, or account which belongs to or is in the possession of" an employer, &c., is by this Act a misdemeanour, and the person so offending is liable to penal servitude for seven years, or to imprisonment for any term not exceeding two years. Thus the offence is regarded as a serious one, and the penalty is severe.

III.—The Trade Union Acts, 1871 and 1876.

1. *Purposes of the Trade Union Acts.*—The Trade Union Act, 1871, was intended to remove the ban or legal disability which deprived such associations of the protection of the law, such protection being enjoyed as a right by all other associative bodies whose existence was not specifically prohibited by statutory enactment. Section 23 of the Act provided for the registration of such bodies "as would have been, if this Act had not been passed, an unlawful combination by reason of one or more of its purposes being in restraint of trade." Under the amending Act of 1876, that most unwise restriction was removed by sect. 16, which declared that a

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society can be registered as a Trade Union "whether such combination *would or would not*, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade." There is still, however, a restriction. A society to be registered under the Acts must in its rules provide "either for regulating trade relations, or for imposing restrictive conditions on the conduct of trade." Hence societies which merely provide relief for members out of employment, or other similar benefits, cannot apparently be so registered. They may, however, be registered as "specially authorised societies" under the Friendly Societies Acts, by virtue of an authority granted on March 20th, 1877, forms as to which are provided by the Registrar of Friendly Societies and of Trade Unions.

Modification of Doctrine of Restraint of Trade.—By sects. 2 and 3 it is declared that the purposes of a Trade Union shall not be deemed unlawful by reason merely that they are "in restraint of trade," so as to render any member liable to criminal prosecution for conspiracy or otherwise; nor so as to render void or voidable any agreement or trust. Criminal prosecution is provided against by sect. 2, and civil rights are secured by sect. 3. In this connection, sect. 3 of the Conspiracy and Protection of Property Act, 1875, affords further protection, for

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it legalises all acts done in furtherance of a combination or dispute, if the acts so done are not in themselves "crimes" if done by one person. This provision practically concedes to workmen co-equal rights with other persons.

Mischievous Effects of the Doctrine.—The doctrine of the "restraint of trade" is, it would seem, finally and wholly disposed of in connection with Trade Unions and labour disputes. But the taint of it is left in the Law Courts, from the magistrates' bench to the High Court of Justice, even to the last court of appeal—the House of Lords. The importation of that doctrine into disputes between employers and workpeople has done infinite harm. It has caused more trouble than perhaps any other expression delivered in a court of law. The nearest approach to it, in its mischievous effects, is the doctrine of "common employment," by which workmen were deprived of legal remedy in cases of injury while following their employment. If the impression created by the doctrine of "restraint of trade" could be erased from the minds of those who administer the law, much of the heart-burning caused by prosecutions of workmen would be removed. Questions as to the legal rights of Trade Unions, in the processes of Civil Law, would also be simplified, although care is taken in the Trade Union Acts to define such in most instances.

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2. *Investment of Funds.*—The Trade Union Act, 1876, amended the principal Act (1871) in several important particulars, not the least of which was the improved definition of a Trade Union, and its extension to bodies as to which there was previously some doubt. Another important amendment was as to property and funds. By sect. 3 of the Act of 1871 it is provided that "the real or personal estate of any branch of a Trade Union shall be vested in the trustees of such branch." In sect. 16 of the Act of 1876 it is enacted "or of the trustees of the Trade Union, if the rules of the Trade Union so provide." Thus amalgamated Unions, like those of the Engineers, Carpenters, and other great organisations, have power to invest the general funds for the benefit of all concerned. This provision has enabled Trade Unions to create large "reserve funds," so as to ensure the payment of such benefits as superannuation in old age, in sickness, or cases of accident, which otherwise they would not be able to create. The Act further provides for the appointment and removal of trustees; the registry of Unions in more than one country; jurisdiction in cases of offences; membership of Unions; nominations, change of name, dissolution, &c., &c.

Objections to Registration considered.—With respect to the general provisions in the two Trade Union Acts, 1871 and 1876, little need be said

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in this introduction. They are clearly expressed in the Acts, and by this time are fairly well understood by the officials of all registered Trade Unions. It is a fortunate circumstance that the several registrars appointed to administer the Acts have interpreted them, and applied them, in such a manner as to avert any serious friction. The regulations and forms have been prepared with so much care that very little difficulty has been experienced. This is attested by the fact that no serious complaints have been heard, and there has been no demand for changes in the law. Moreover, most of the Unions which, in the earlier period of the existence of those Acts, were somewhat averse to registration, have since been registered. At first some objected, but it was mainly on the ground that the "Criminal Law Amendment Act, 1871," formed part of the original Bill; and even when the third clause was separated from it, and was presented as a new Bill, it was passed as though it was its natural sequel or complement. That Act was, however, repealed in 1875, by the "Labour Laws."

General Character of the Provisions.—The Trade Union Acts, 1871 and 1876, together with the regulations and forms, and the notes of cases herein given, in connection with the several sections in the Acts which have occasioned an appeal to the Higher Courts, mostly under the Summary Jurisdiction Acts, are sufficiently clear without any

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further elaborate explanation. The several sections explain the relationship of members to the Unions, and *vice versâ;* and declare also the relative position of Trade Unions to other societies, registered by the same official under other Acts. They define the position of Trade Unions as to holding land, as regards vesting their property in trustees, and the duties and responsibilities of such trustees, their actions at law, liability, &c.; provide for the audit of accounts, for summary proceedings in case of fraud, registration of Union, &c.; and a schedule is given as to matters to be provided for by and in the rules of Trade Unions, registered under the Acts. Appeals are also provided for—to Quarter Sessions, to the Superior Courts, and from the Sheriff's Court in Scotland.

Registration of Trade Unions.—The Registrar of Friendly Societies is also the Registrar of Trade Unions, and of other bodies constituted under certain Acts. The registrar has to see that the rules of the Union fulfil the conditions set forth in the Trade Union Acts, 1871 and 1876, and now also the provisions of the Trade Union (Provident Funds) Act, 1893, wherein is given a definition of "provident purposes," &c., to enable the Unions to claim exemption from the income tax.

Validity of Registration.—It does not appear to be the duty of the registrar to examine the rules, and to certify that they are, one and all, in

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accordance with the general law of the land; but he must certify that the rules agree with the Acts under which registration is made, and with the schedule of the Act of 1871. If any unlawful purpose was expressed in the rules, doubtless he would refuse registration. But apparently refusal to register is rare. (See p. 70.)

Regulations and Forms.—Certain regulations are in force, made by the Home Secretary, and forms are provided, in accordance with the regulations, for the use of Trade Unions registered under the Acts. Those in force, with a few modifications in some of the forms, were issued in 1876, by the then Home Secretary, "Rich. Assheton Cross," now Lord Cross. All the requisite forms are supplied to the officers of Trade Unions by the registrar. It might be added that all the regulations and forms are given, *in extenso*, in Howell's "Handybook of the Labour Laws," Third Edition, 1895,* and we have decided to reproduce them for reference. (See Appendix C, p. 206).

Privileges conferred by Registration.—Registration does not in any way curtail the rights of Trade Unions, but it confers certain privileges. This is especially the case as regards property and funds, and proceedings for the recovery of the same, or for the punishment of those who embezzle, or misappropriate, or withhold such property and

* Macmillan & Co., London and New York, price 3*s.* 6*d.* net.

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funds. But registered Unions have to send an annual account of income and expenditure in accordance with the form supplied for that purpose. They have also to notify changes in the rules, which changes have to be certified, and also changes in the registered address of the Union, and other details as required.

Legal Position of Trade Unions.—Trade Unions are no longer secret societies. There is no necessity for secrecy. For all lawful purposes, they are as legal, in constitution and aims, as any other society or association permitted by law to exist in any part of the United Kingdom.

Importance of Trade Union Rules.—The most important matter in connection with the formation, establishment, and conduct of a Trade Union, is the framing of the constitution and rules. Provision is made in this respect in the Act of 1871, by sect. 14, sub-sects. 1 and 2, the matters specially to be provided for being set out in Schedule I., under six heads. The section and schedule only apply to registered Unions, but non-registered Unions ought also to comply with the whole of the provisions. There is no need to hide any of the objects, as all such are now legal. Trade Unions may do all that any other associated body of persons may lawfully do, provided that the objects, purposes, and means are clearly set forth and defined. If these are not fully set forth, a vote, to

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do something not thus provided for, even a nearly unanimous vote of the members of the Union who recorded their votes, will not render the act legal, if any member calls it in question. This fact was clearly brought home to the council and members of the Associated Iron-moulders of Scotland, during the recent strike and lock-out in the engineering trades; the incident deserves to be noted.

Grants of Money—an "Interdict."—The council of the Iron-moulders' Society issued voting papers for a grant of £1,500 towards the support of the men locked out. The members voted in its favour by a large majority. But there was some dissatisfaction among the members as to the dispute, and they, or some of them, wrote to the registrar requesting his opinion as to the legality of the grant, even though sanctioned by a majority of the members. Being thus appealed to, he replied that no provision for such grant was made in the rules. The matter was then brought before the Sheriff Court of Lanarkshire, Glasgow, in October, 1897, and the sheriff issued an "interdict" (the same as an "injunction" in an English Court) restraining the Union from paying over the sum granted, and the amount was thereupon withheld. The grant would have been perfectly lawful if the rules had so provided. It is indeed one of the purposes of a Trade Union to help another Union when in trouble, or the men who are out on strike, or are

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locked out in connection with a labour dispute. Sometimes they lend sums to each other; all such things can be lawfully done if the rules so provide.

The Right of withholding Strike Pay.—A case of some importance was heard in the Appeal Court on November 13th, 1900, as to the right of a Trade Union to refuse strike pay to its members. The case arose out of a dispute in August, 1897, when the coal-hewers at a certain pit left their work without having first obtained the consent of the council or committee of the association, as provided for in the rules. The ground of refusal by the executive to grant strike pay was that by so doing they would render themselves, and the trustees of the Union, liable for such payment, seeing that it was contrary to the rules. The men then made an appeal to the council, and, in sympathy with the men on strike, the council carried a resolution to grant an amount equal to lock-out pay of 10*s*. per week, in spite of the fact that the chairman of the meeting ruled the motion out of order. The trustees applied to the Court, and Mr. Justice Cozens-Hardy held that the resolution of the council was *ultra vires*, and therefore the treasurer could not properly pay the amount in question. The men, being dissatisfied, appealed against that decision. Their Lordships in the Appeal Court dismissed the appeal, thus upholding the right of the Union to refuse strike pay in cases where specific rules were violated. (See p. 100.)

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Rules as to Property and Funds.—Provision must be made for the investment of funds, and also as to the appointment of trustees, and other officers, and committee (sub-sects. 4 and 5). Now that the accumulated funds of some Trade Unions are very large, and the Post Office Savings Bank impose a restriction upon the amount to be deposited, the Unions are seeking other investments, and provision must be made in the rules to enable the trustees so to invest. There is really no restriction in this respect, except as regards land, which is limited to one acre. But as every branch is "considered a distinct Union" for the purposes of this section (sect. 7), there is a wide latitude even as regards the acquisition of land.

Rules as to Benefits, Fines, &c.—The rules must also provide as to benefits, fines, and forfeitures (sub-sect. 2); as to amendment, &c., of rules (sub-sect. 3), and inspection of books by members (sub-sect. 6). If the constitution and rules are properly and fully set forth, the Union runs no risk of legal disablement. The better class of Unions, such as those of the Engineers, Carpenters and Joiners, Boilermakers and Iron Shipbuilders, Ironfounders, Steam Engine Makers, &c., have codes of rules, which may well be taken as models by other Unions.

(See Trade Union Acts, 1871 and 1876, pp. 48, 101.)

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IV.—Trade Union (Provident Funds) Act, 1893.

Exemption of Funds from Income Tax.—The State, in order to encourage thrift, exempted certain societies, such as friendly societies, industrial and provident societies, charitable institutions, loan societies, and even building societies, from income tax, under the Inland Revenue Acts. Most of the Trade Unions, especially since 1850, have also provided "provident benefits," but the exemption did not extend to them. Indeed it could not very well do so, seeing that Trade Unions had no legal protection up to 1869, and were only legally recognized as lawful associations in 1871. Since that date, and even before it, from the year 1851, in fact, when the Amalgamated Society of Engineers was established, it was felt that the funds appropriated to provident benefits should have the same exemption from income tax as all the other societies named. In 1893 I was fortunate enough to be able to carry a Bill through the House of Commons conceding the same privilege. It was passed by Parliament in that session—52 Vict. c. 2. (See p. 186.)

Restriction of the Exemption.—The exemption is limited to Trade Unions registered under the Trade Union Acts, 1871 & 1876. It is also restricted to the invested funds of the Union, because the yearly income of the Union from subscriptions is not subject to income tax. But that is also the case

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as regards all other societies enjoying the privilege of exemption.

Definition of Provident Benefits.—In this Act the term "provident benefits" is for the first time defined (sect. 3). It "includes any payment made to a member during sickness or incapacity from personal injury, or while out of work, or to an aged member by way of superannuation; or to a member who has met with an accident, or has lost his tools by fire or theft; or the payment of funeral expenses, or for provision for children of a deceased member." As many of the largest Trade Unions provide all those benefits, and most of them provide one or more of such benefits, the concession was a reasonable one. It has encouraged the Unions to create reserve funds, especially to insure the payment of superannuation to aged members and other provident benefits provided for in the rules.

(See the Act, pp. 186.)

V.—The Employers and Workmen Act, 1875.

General Summary of Preceding Acts.—The preceding Acts deal with Trade Unions, as associated bodies of workmen, in their relationship to the State, as lawful organizations; and with the relationship of the members of such bodies to such societies. They define such relationships, the relative duties and responsibilities; provide for actions at law

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and prosecution of offenders, and also punishments in case of an infraction of the law. The modes of procedure are also laid down, and the requisite machinery is provided for acting in conformity to the Acts.

Nature of the Employers and Workmen Act.—The Employers and Workmen Act, 1875, is of a different character. It deals with the relationships subsisting between employers and workmen, the hirer and the hired. It takes the place of the old Master and Servant Acts, and some other Acts, which for centuries governed the hired workmen of this country. Under those Acts a breach of contract by a workman was a criminal offence, criminally punishable. There was no option on the part of justices of the peace, magistrates, or Judges, but to inflict a sentence of imprisonment, except dismissal of the case, which latter seldom took place.

The old Master and Servant Acts.—In the memorandum prepared in 1866, to lay before the Select Committee on the operation of the Master and Servant Acts, it was stated that, on the average, there were 11,000 convictions annually, under those Acts. The result of the inquiry was the Master and Servant Act, 1867, which in some particulars modified the provisions of the Acts at that date in force. The amending Act continued in force until 1875, when it was repealed by the Conspiracy and

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Protection of Property Act, as were also numerous other enactments.

Changes effected by the New Act.—The changes effected by the Employers and Workmen Act were great and far-reaching. The very title denotes an important change. It is no longer "Masters and Servants," but "Employers and Workmen." As regards contracts of service there was to be equality. A breach of contract was to be a civil offence in all cases of labour, as well as in all other cases. The then Home Secretary, Sir Richard Cross, now Lord Cross, expressed the change thus: "For the future, contracts of hiring and of service shall be as free and independent, both for master and servant, as any other contracts between persons."

Breaches of Labour Contracts—Civil Offences.—Breaches of labour contract are no longer criminal offences, except in particular cases mentioned in the Conspiracy and Protection of Property Act, as specified further on. They are now the subject of civil action, in a civil court, by civil procedure. The tribunals for hearing and determining disputes between employers and workmen are; (1) the County Court in England, the Sheriff Court in Scotland, and the Civil Bill Court in Ireland; and (2) Courts of Summary Jurisdiction. The latter Courts are deemed to be civil courts of summary jurisdiction when adjudicating upon all cases of labour contracts, except those specified in the

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Conspiracy and Protection of Property Act. The constitution and jurisdiction of all such Courts are clearly set forth in the several sections of the Act. Courts of summary jurisdiction include those constituted by justices of the peace in places where the other Courts specified in the Act do not exist. The rules as to procedure under the Summary Jurisdiction Acts are those framed by Lord Herschell, in 1886, when Lord Chancellor. (See Rules, p. 193.)

County Courts Procedure.—Procedure in County Courts is regulated by the rules and forms framed under the County Courts Acts Consolidation Act, 1888, and approved by the Lord Chancellor. In these rules and forms every detail of procedure is fully set forth. They may be varied from time to time, as new features arise in cases before the Courts, or as new powers may be given by Acts not passed when the rules were framed; but, in general, the principles and character remain unchanged.*

Powers of the Courts under the Act.—The power conferred on the Courts constituted under the Employers and Workmen Act, 1875, is necessarily great. The Court may adjust and set off one against the other all claims for wages, damages, or otherwise. It may rescind contracts, or order the performance of existing contracts, and require security for such performance; or award damages

* A brief synopsis of the County Court Rules, &c., is given in the "Handy-Book of the Labour Laws."

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for non-fulfilment of contract. Instances sometimes occur when batches of workmen are summoned for breach of contract; the conditions being, in such cases, the same or similar, the fines or damages may be, and often are, of the same amount.

Limitation of Jurisdiction.—In one respect the power of the Courts is limited, that is, as regards the amount of claim. The ordinary jurisdiction of the County Court is limited to £50, but actions for a larger amount may be tried with the consent of both parties. In Courts of summary jurisdiction the amount is limited to £10, and no order can be made for the payment of more than £10, exclusive of costs, nor can security be exacted exceeding that sum.

Labour Contracts.—Contracts may be express, or may be implied, oral, or in writing. Labour contracts are in the great majority of cases implied. They cover all recognised trade customs, rules, and the regulations in the locality where the work or service is performed; and also the special rules or regulations of an employer or firm, if the workmen have, by working under them, given a tacit assent to them, unless the workman has made an express stipulation to the contrary. Individual labour contracts are now comparatively rare; collective bargaining is the rule. In some places working rules, agreed to by employers and workmen in a branch of trade, regulate the conditions of labour. In such cases the contract is express and

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definite. In other cases one party or the other may plead trade customs or usages; these, if established, are regarded as binding, unless it can be shown that they do not apply in the particular case.

Validity of Contracts.—The question as to the validity of a contract often arises in courts of law. In all such cases the Court decides the point. But there are some general principles of law which apply. For example, contracts to be valid must be in accordance with the general law. Again, some consideration, that is, value received, or to be given, is essential to the validity of a contract, not under seal. The Courts sometimes refuse to enforce unequal contracts, and by the Employers and Workmen Act they may be rescinded. Mutuality is implied, and, in this connection, the equity of the contract is considered. For example, if an employer claims the right to dismiss a workman without notice, there is an implied right on the part of a workman to leave work without notice, the conditions being in all respects equal. But if the workman had been guilty of some wrong or misconduct, justifying his discharge, the claim of equal right is forfeited.

(See Employers and Workmen Act, p. 172.)

VI.—Conspiracy and Protection of Property Act.

Conspiracy abolished as regards Labour.—Although this Act is entitled the Conspiracy and Protection of Property Act, 1875, conspiracy is by

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this Act, and by sect. 2 of the Trade Union Act, 1871, wholly abolished as regards labour disputes, except conspiracies to commit what would be an offence, criminal or civil, if done by one person. The respective sections in the two Acts relating to conspiracy must be read and construed together, both being operative.

Unlawful Purposes.—The Trade Union Act, 1871, which legalises combinations of workmen, declares, sect. 2: "The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to criminal prosecution for conspiracy or otherwise." Thus every combination of workmen which before that Act was passed would have been unlawful, merely on the ground of its purposes being in restraint of trade, is expressly legalised, whether such combination was temporary or permanent in its character. That section did not, however, avert prosecutions.

The Criminal Law Amendment Act, 1871.—When the Trade Union Bill was first introduced it contained a clause which was afterwards separated from it and embodied in another Bill: it was carried *pari passu* with the Trade Union Bill, and became the Criminal Law Amendment Act, 1871. Unhappily the two Acts were often construed together as if one Act, in so far as the specific sections relating to labour disputes were concerned.

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The legal decisions given in some cases so interpreted the provisions in the two Acts as to imply that while the object of a labour dispute was lawful, the means adopted by workmen to achieve that object were illegal. The Criminal Law Amendment Act, 1871, worked so mischievously that it was repealed by the Conspiracy and Protection of Property Act, 1875, sect. 3 of the latter Act being substituted for the former Act. The words of the section are:—

"An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime."

Criminal Conspiracies.—It would seem, therefore, that to be indicted for conspiracy, in matters relating to labour disputes, the combination must be for the purpose of committing a crime, whether that crime be the object of the combination or the means employed to effect the object. The common law of conspiracy is consequently abolished as affecting labour disputes between employers and workmen.

Sub-sect. 4 of sect. 3 defines "crime," as used in sect. 3, to mean "an offence punishable on indictment, or an offence which is punishable on summary

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conviction, and for the commission of which the offender is liable, under the statute making the offence punishable, to be imprisoned either absolutely, or at the discretion of the Court as an alternative for some other punishment." Sub-sect. 5 of sect. 3 limits the penalty to three months, except where the statute for the punishment of the offence prescribes a longer term when the act is committed by one person.

Application of Act to Gas and Water Works.—So far the Act deals with offences by workmen in connection with, or arising out of labour disputes generally. Then follows sect. 4, a specific provision relating breaches of contract by "persons employed in the public supply of gas or water," thus:—

"Persons employed in the public supply of gas or water wilfully and maliciously breaking their contract of service, knowing, or having reasonable cause to believe, that the probable consequence of their so doing, either alone or in combination with others, will be to deprive a town or place of gas or water, is liable on conviction to pay a penalty not exceeding £20, or to be imprisoned for any term not exceeding three months, with or without hard labour."

A printed copy of this section is to be posted up at the gas or water works in a conspicuous place. The penalty for not doing so is a fine of £5 for every day so long as the default continues. Defacing such notice is punishable by a fine not exceeding 40*s*. It will be seen that sect. 4 is safeguarded by the

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words wilfully and maliciously, but these have a technical meaning.

Breach of Contract endangering Life, &c.—Sect. 5 is of general application, and it is of importance that all cases under it should be carefully watched, for it is so drafted and worded that an act which, if unconnected with labour, would be dealt with as an ordinary breach of contract, might under its provisions become, in the case of workmen, a criminal offence. The section is so worded as to necessitate careful consideration on the part of the Court as to the nature of the offence, and, impliedly, of the motive which led to it. A wrongful act, done intentionally, without just cause or excuse, might be construed as "wilfully and maliciously" breaking a contract of service or of hiring, the person so offending "knowing, or having reasonable cause to believe, that the probable consequences of his so doing will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction, or serious injury." And yet none of these things may have entered into the offender's head. The word maliciously, as here used, according to the Malicious Injuries to Property Act (24 & 25 Vict. c. 97), s. 58, means, "whether the offence was from malice or not."

Penalty for Certain Breaches of Contract.—All the cases decided under this section require careful

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consideration, because the penalty is a fine not exceeding £20, or imprisonment, with or without hard labour, for a term not exceeding three months. The words "valuable property" are not defined in the Act; any definition by the Courts will therefore be quoted as a precedent in any new case that may arise. It is possible to overstrain the words of this section unintentionally, by reason of the fact that the section applies only to contracts of service.

Neglect by Master.—Sect. 6 imposes a penalty for neglect by a master to provide necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse, for his servant or apprentice, whereby the health of either is or is likely to be seriously or permanently injured—the penalty is a sum not exceeding £20, or imprisonment, with or without hard labour, for a term not exceeding six months. By s. 11 the respective parties to the contract of service, their husbands or wives, were empowered to give evidence in all cases under sects. 4, 5 and 6 of this Act. The prisoner was in this case, as under the Employers and Workmen Act, also empowered to give evidence on oath.

Picketing, Watching, and Besetting.—The majority of prosecutions under this Act are instituted under sect. 7. It is commonly known as the "picketing clause." The *Plymouth* case was under this

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section (sub-sect. 1), the recorder sentenced the men to a fine of £20, with the alternative of six weeks imprisonment; but the conviction was quashed on appeal. *Curran* v. *Treleaven.* (See p. 134.) The section sets forth certain acts which are unlawful, and the penalty if they are committed. In brief, the acts are as follows:—Uses violence to or intimidates a person, his wife or children, or injures such person's property; persistently follows such person about from place to place; hides tools, clothes, or other property, or deprives such person of, or hinders him in the use thereof; watches or besets the house or place where such person resides, works, carries on business, or happens to be, or the approach to such house or place; or follows, with two or more, such person in a disorderly manner. Those are the prohibited acts, qualified by this object—"with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully, and without legal authority."

Lawful Picketing Defined.—There is a further qualification in what is termed the saving clause, thus:—"Attending at or near the place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section." The whole section is general in its character and

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application, and the mere fact that the prohibited act or acts were done in connection with a labour dispute ought not to aggravate the offence. It is important to remember that the word "compel" is used instead of "coerce," as in the repealed Act, and that the word "molest" is expunged. The Court may impose a fine in lieu of imprisonment; the extreme penalty is a fine of £20, or three months imprisonment with or without hard labour, but either may be less. In brief, the things really prohibited are violence, intimidation, or compulsion — force in some form, or threats of force, and depriving a man of the use of his tools or other property. Peaceful picketing is lawful within the limits prescribed by the Act.

Taff Vale Case—One of Picketing.—The case of the *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants* arose out of a dispute between the former and the latter, eventuating in a strike. In connection with that strike, the Great Western Railway Station at Cardiff, the works, and other places were picketed. The Railway Company thereupon applied for an injunction to restrain two officials of the Union, Messrs. Bell and Holmes, from watching and besetting the places referred to. The injunction was contested, but it was granted. The Union did not in this case instruct counsel to appeal, as it was personal to the men named in the summons. Then an injunction was applied

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for against the Union. The summons taken out by the plaintiffs, in the Queen's Bench Division, and adjourned into Court, was heard before Mr. Justice Farwell, in the High Court of Justice, Chancery Division, sitting as Vacation Judge, on September 5th, 1900. "By the summons an injunction was asked for to restrain the defendants, the Amalgamated Society of Railway Servants, Richard Bell and James Holmes, from watching or besetting, or causing to be watched or beset, the Great Western Railway Station at Cardiff or the works of the plaintiffs, or any of them, or the approaches thereto, or the place of residence, or any place where they may happen to be, of any workman employed by or proposing to work for the plaintiffs, for the purpose of persuading or otherwise preventing persons from working for the plaintiffs, or for any purpose except merely to obtain or communicate information, and from procuring any persons who may have or may enter into contracts with the plaintiffs to commit a breach of such contracts."

The terms of the summons are not important from a legal standpoint, as any terms pertinent to the case can be put in by the solicitor in whose hands it is. But the terms are nevertheless important as showing the object and intention of the plaintiffs, it being, in this instance, the prevention of picketing. In order to cover all possibilities the words "for the purpose of persuading or otherwise

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preventing persons from working for the plaintiffs," were inserted in the summons. Naturally, this led to the conclusion that a blow was aimed at "peaceful picketing," and the Trade and Labour Unions were consequently up in arms when the injunction asked for was granted.

Union responsible for Acts of Members.—Though the summons set forth picketing as the offence against which the injunction was asked for, in reality the judgment of Mr. Justice Farwell did not deal with it except inferentially. The offence was assumed —that picketing was in some way an infraction of the law—else how could an injunction be granted? Under some of the terms in the summons, as, for example, *preventing* persons doing what they had a right to do, or procuring persons to break contracts, such acts, if committed, and were proven, would be an infraction of the law. But *persuading* a person to do a thing, or not to do a thing, would not be unlawful, unless the act itself was specifically unlawful. Unlawfulness was implied in the summons, and assumed apparently by the learned Judge. The judgment was wider. It was a decision that a Trade Union was in this particular instance responsible for the acts of the members, and that the acts in question were in themselves contrary to law. This was the essence of the judgment, and it was against that dictum that the defendants in the action appealed. It is essential that the two matters be

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separated—the act of picketing, and the responsibility of a Trade Union.

The defendant society pleaded that the name of the society should be struck out, on the ground that it was neither a corporation nor an individual, and cannot be sued in a *quasi* corporate or any other capacity. Mr. Justice Farwell on this point is reported to have said: "It is undoubtedly true that a Trade Union is neither a corporation nor an individual, nor a partnership between a number of individuals." He went on to say that "this does not by any means conclude the case." He then quoted reported cases relating to Improvement Commissioners, Turnpike Trusts, Railways, Benefit Building Societies, &c., all of which are corporate bodies, in support of the view that Trade Unions, though not corporate bodies, can be sued, and, consequently, that they can, as such, sue. This decision was regarded with alarm by Trade Union officials, and by Labour leaders, and therefore it was appealed against; the Trade Unions of the country supported the Amalgamated Society of Railway Servants in that appeal, because it was felt that the decision opened the door to litigation of a serious kind, and endangered the position of Trade Unions.

Appeal Case—A Trade Union not suable.—The appeal of the Amalgamated Society of Railway Servants was heard before the Master of the Rolls and Lords Justices Collins and Stirling, in the Court

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of Appeal, on November 12th, and on November 21st the Master of the Rolls gave judgment. In reality the question of picketing as such did not arise, except incidentally. (See p. 82.) The sole point raised was whether the action was maintainable against a Trade Union as such, consisting not only of the defendants named (Messrs. Bell and Holmes, and others), but of a great number of other persons. In general terms, the judgment of the Master of the Rolls, in which Lords Justices Collins and Stirling concurred, was: At Common Law the defendants could not be sued in the name in which they were sued in this action, any more than a tradesman could sue a defendant in the name of a West End club for goods supplied to the club. His Lordship went on to say that for the action to be maintained against the defendants, in the name of "The Amalgamated Society of Railway Servants," there must be some statute enabling this to be done, either by creating the society a corporation or enacting that it might be sued in its registered name. In the Trade Union Acts of 1871 and 1876 there was no section empowering a Trade Union to sue or to be sued in its registered name, nor was there any provision constituting the society a corporation so that it might be sued as such. If a Trade Union can be sued in the manner proposed, the funds of the Union would be liable to be taken on execution under a judgment against the Union in the society's name.

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His Lordship went on to consider whether the Legislature intended that a Trade Union was to be sued in its registered name. If it had been so intended the Legislature knew well how, in plain terms, to bring about such a result. Reference was then made to sect. 6 of the Companies Act, a part of which section was re-enacted in the Trade Union Act of 1871, but the last part, about incorporation, was left out—"pointedly omitted" seem to have been the words used by the Master of the Rolls. Registration did not render the society an entity capable of being sued in its registered name. A Trade Union was not made a corporation, as was constantly the case with other societies. The case relied on by Mr. Justice Farwell did not affect the question for decision. As there was no statute empowering the action to be brought against the Union in its registered name, it was not maintainable against the Amalgamated Society of Railway Servants, and these defendants must therefore be struck out, and the injunction against them dissolved.

Intention of the Legislature.—The appeal of the Amalgamated Society of Railway Servants was therefore successful in the Court of Appeal, the injunction against the Union being dissolved, defendants being allowed costs. Leave was given to appeal to a higher Court, but whether it will be further contested remains to be seen. (January, 1901). The question

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of picketing was not raised or referred to; the judgment dealt with the liability and responsibility of the Union, as such, in an action at law involving damages — suing and being sued as a registered body. As to the intention of the Legislature in this respect I can speak with some authority, as I had more to do with the negotiations respecting the enactment of the Trade Union Acts, 1871 and 1876, during their passage through both Houses of Parliament, than any other living man. The Members of Parliament who were more or less the exponents of the views of Trade Unionists at that period were Mr. Thomas Hughes—the late Judge Hughes; the late Mr. A. J. Mundella; the late Sir James Stansfeld, and Mr. William Rathbone, who is, I am glad to say, still living. Lord James of Hereford and Sir William Harcourt had more to do personally with the Labour Laws, and the Trade Union Act, 1876, together with the repeal of the Criminal Law Amendment Act, 1871; but incidentally they were cognisant of the trend of workmen's opinion in respect of all of the above.

In my interviews with the then Home Secretary, Sir Henry Austin Bruce, afterwards Lord Aberdare, and they were many, some of which were private, at the residences of Sir James Stansfeld and Mr. William Rathbone, others by public deputation at the Home Office, or interviews at the House of Commons, the question of empowering Trade

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Unions to sue and to be sued was often and often discussed. Some few were in favour of embodying such power in the Trade Union Bill, but the vast preponderating opinion was averse to it. Any provision of that nature was intentionally left out; the Home Secretary being quite as strong on that point as Messrs. Hughes, Mundella, J. Hinde Palmer, Serjeant Simon, and, so far as my memory serves me, the late Lord Coleridge. The representatives of labour and officials of Trade Unions, whose mouthpiece I then was, were strongly averse to any clause being in the Bill which would open the door to litigation. In this the Government concurred. The absence, therefore, of any express power enabling a Union to sue or to be sued, was intentional on the part of the authors of the measure, and that intention was indorsed in the passage of the Bill through Parliament. Of course, the above remarks only relate to intention. From a legal point of view the Courts decide upon the facts of the case and the language of the statute, rather than upon the intention.

Reduction of Penalties, Tribunals, Procedure, &c.—By sect. 8 power is given to any Court or Justices having jurisdiction to reduce the penalties under any other Act relating to employers and workmen to not less than one-fourth of the maximum penalty. The constitution of the tribunal, and modes of procedure in dealing with cases, are

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given in sects. 9 to 11. (See sections of the Act, pp. 148—9.) Appeals are provided for in sect. 12. The remaining sections contain definitions, the saving clause, repeals of former Acts, not the least important enactment in this Act, and the application of the Act to Scotland and Ireland.

Conclusion.—These notes need not be further extended, as the provisions of the Act are given in full, and the cases relating to them will be found in that connection. It only remains to add that most of the difficulties that have arisen, under the several Acts here referred to, have been rather in the administration of the law than from defects in the statutes. The Acts in force have been evolved out of conditions of the past, when labour was restrained by law. Equality and freedom have been substituted, and under their influence severity must disappear. (See Conspiracy and Protection of Property Act, pp. 123—71.)

VII.—The Conciliation Act, 1896.

Origin of Labour Arbitrations.—As previously remarked, most of the legislation in this country relating to labour, during nearly five hundred years, dealt with its aggressive or militant side, the object being to restrain the liberty of workmen in certain cases, and to regulate their action in others. The specific Acts of this character commenced with the Statute of Labourers, in 1349—

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the 23 Edw. III.—and continued all through the centuries down to the repeal of the Combination Laws, in 1824—25. One Act, the Statute of Apprentices (5 Eliz. c. 4), sought to restore certain rights which had been taken away by statute, and some, towards the close of the eighteenth century, such as the Spitalfields Acts, gave to workmen an easy right of appeal before the justices of the peace in matters affecting the silk industry in the district of Spitalfields. But even the provisions in those Acts were illusory for the most part, and generally they were badly administered. It was not until the beginning of this century that the idea of protecting labour was entertained by Parliament, and then only in the case of young children, in the first Factory Act, in 1802, which Act was mainly intended to protect parish apprentices; but its influence extended farther, and was the starting point of the Factory and Workshops Acts.

Arbitration by Justices of the Peace.—The statute of Elizabeth was indeed one of regulation—a kind of general embodiment of the yet remaining ordinances of the old Guilds, and of the least injurious provisions in previous statutes. It was the same in the Spitalfields Acts, but the latter contained provisions for arbitration before the justices in specified cases. All such provisions, however, were in the nature of regulations, and therefore they were more or less mischievous and disastrous.

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Right of Association Conceded.—The repeal of the Combination Laws was the first great step towards the emancipation of labour from State control. In a way, it gave the right of association, and partially, to a limited extent, legalised the combinations then in existence. Before this, however, encouragement was given to associative effort by the Friendly Societies Acts, carried ere the close of the eighteenth century, though the objects were strictly confined within certain limits, the purposes of Trade Unions being excluded therefrom.

Arbitration in the Silk Trades, &c.—As above stated, the Spitalfields Acts provided for a kind of arbitration, and were often appealed to in disputes between the silk manufacturers and their weavers. There were indeed many other Acts in which the principle of arbitration was recognised, commencing with the 1 Anne, st. II. c. 22, down to the 55 Geo. III. c. 184. Those Acts were as a rule specific as to certain industries.

Arbitration for all Trades.—The Act of 1824, the 5 Geo. IV. c. 96, was the first general Act relating to arbitration in labour disputes. It repealed all previous Acts, and consolidated and amended their provisions, so as to make them apply to the changed conditions of labour. But the Act was rendered absolutely nugatory by one provision, namely, that the decision or award should

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not affect the future rates of wages, hours of work, and conditions of labour. This was absurd. All such decisions must affect the future of labour; it cannot, except in very rare instances, affect the past, or even the present. Herein labour disputes differ from disputes in trade and commerce, for in these, as a rule, the matters in dispute pertain to what has been done, or omitted to be done, as the case may be. The only future in all such cases relates to damage or compensation, or to the fulfilment of a contract which has been broken at the date of the action, or submission to the Court. Hence the Act of 1824 was never put in force in a single instance. It was the same with the Conciliation Act of Lord St. Leonards, in 1867. It had the same limitation, and consequently that too was a dead letter. The Arbitration Act, 1872, had in it the elements of a better fate, but that also was a dead letter, because of the unrepealed Act of 1824, which was referred to as the principal Act.

A New Departure.—The Conciliation Act, 1896, has saved itself from a like fate, by repealing all the Acts named. It is permissive in character, and voluntary in its operation. The Board of Trade has certain powers conferred upon it, to take initial steps to bring the parties together; but in general the preference is that the two parties shall in some way intimate their willingness to submit

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the matters in dispute to a Board of Conciliation, either one in existence, or one to be called into existence, for the express purpose of considering and adjusting the differences that may exist in a particular case. There is also a power to act upon the submission of one of the parties; but it is a power which has not been used, and it is fraught with difficulties. An award, in such a case, could only be enforced by legal process, and the Act contains no specific means whereby it could be enforced. There is this legal difficulty in the way: the award must have reference to something to be done in the future, as to which there is no agreement and one of the parties refuses to enter into such agreement. How, therefore, can specific performance be ordered, except by consent, or, if ordered, how can the order be enforced? This is the real difficulty in all labour disputes.

Nature of the Conciliation Act.—The Conciliation Act, 1896 (59 & 60 Vict. c. 30), is simple in construction and is understandable of the people. No cases have arisen under the Act, nor are any likely to arise as at present administered, for the Board of Trade is cautious and careful. The Act provides (sect. 1) for the registration of boards intended to be more or less permanent in character, and for the supply, by such boards, of information, reports, and returns to the Board of Trade, for guidance, &c.

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Sect. 2. Power is given to the Board of Trade to institute inquiries into the causes of labour disputes, and to take steps for the purpose of bringing the parties together; or it may, on the application of either party, appoint a person or persons to act as conciliator; and, on the application of both parties, may appoint an arbitrator. Provision is made for inquiry, and for the preparation of terms of settlement, copy to be sent to the Board of Trade.

Sect. 3. The Arbitration Act, 1869, is expressly excluded, which Act provides for the enforcement of awards.

Sect. 4 gives power to the Board of Trade to aid in establishing Boards of Conciliation; sect. 5 provides for Reports to be presented to Parliament, and sect. 6 as to costs and expenses; sect. 7 repeals former Acts, and sect. 8 gives the short title of the Act.

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THE TRADE UNION ACTS, 1871 AND 1876.

"The Act of 1871," said Jessel, M. R., in 1880, "no doubt was passed primarily with a view to preventing the treasurers and secretaries and officers of these societies from robbing them; that was the chief object." [This ignores Russell Gurney's Act, passed in 1868. See p. 115.] "It was discovered that some of these men, abusing the confidence reposed in them, took advantage of the law, which made these societies illegal, by appropriating their funds and property to their own use.* That, no doubt, was one of the principal objects, and therefore the Act was passed to get at these men. Another object was this: there was a great difficulty in suing and getting their property from third persons, and one object of the Act was to enable these societies to sue in respect of their property, and also to enable them to hold property, such as a house or office." (*Rigby* v. *Connol*, 14 Ch. D. 489).

34 & 35 Vict. c. 31.

An Act to amend the Law relating to Trades Unions. [29th June, 1871.

The Act of 1876 (see p. 101) is entitled "An Act to amend the Trade Union Act, 1871." *Trade Union* seems to be the correct term.

* A notorious instance was *Hornby* v. *Close*, in 1867 (L. R. 2 Q. B. 153). The Court of Queen's Bench (Cockburn, C. J., Blackburn, Mellor, and Lush, JJ.) unanimously held that Justices were right in dismissing a complaint against a defaulting member of "a society of which one of the objects was the relief of sick, disabled and aged members, and the burial of dead members, but of which one of the main objects was that of a trades union, and the support of members when on strike," on the ground that this last purpose was "illegal." (See p. 51.)

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Preliminary.

1. This Act may be cited as "The Trade Union Act, 1871." Short title.

The two Acts are to be known as the "Trade Union Acts, 1871 and 1876" and are to be construed together (39 & 40 Vict. 22, s. 1). For instance, see p. 102 and p. 111.

Criminal Provisions.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. Trade union not criminal.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. Trade union not unlawful for civil purposes.

These sections summarise the results of many years' struggle to obtain legal recognition for certain combinations of working men and "the rights of labour," and legal protection for their property. (See pp. 2—4.)

The legal theory of "restraint of trade" cannot be fully dealt with here. "It was decided so early as the reign of Henry V. that a contract imposing a general restraint on trade was void" (Notes to *Mitchel* v. *Reynolds*, 1 Smith, L. C.). The question was thoroughly discussed in the House of Lords expressly from a modern standpoint in *Nordenfelt* v. *Maxim Nordenfelt, &c.* (1894, A. C. 535), and it may now be taken as settled that whether the extent of the restraint of trade (in time and area) is reasonable and therefore legal, or not, must depend on the circumstances of each case, and the convenience of the public, *i.e.*, on considerations of "public

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S. 3. policy." * Till the Act of 1871, the law held that trade unions necessarily impeded trade, and so far were illegal institutions. They impeded trade by promoting joint and organised action among their members in their own interests, and this the law frequently held to amount to the crime of conspiracy. Perhaps the leading case is *Hilton* v. *Eckersley* in 1855 (6 El. & Bl. 47), which decided that an association of masters (which was practically a trade union) had not validity at common law. "If agreements like the present [between the members]" said Crompton, J., "were enforceable at law, I see no reason why . . . they should not be enforceable in equity; and our courts of equity might be called upon to enjoin masters against opening their mills, or workmen from going to work or discontinuing a strike whilst our county courts would have to make decrees for the contributions to strikers or to enforce penalties from workmen who have felt it their duty to resume employment." In the same case, in delivering the judgment of the Exchequer Chamber, Alderson, B., said: "We see no way of avoiding the conclusion that, if a bond of this sort between masters is capable of being enforced at law, an agreement to the same effect amongst workmen must be equally legal and enforceable, and so we shall be giving a legal effect to combinations of workmen for the purpose of raising wages, and make their strikes capable of being enforced at law."

Of this case Lord Watson said in 1891: "The agreement of which the appellants complain left the contracting parties free to recede from it at their pleasure, and is not obnoxious to the rule of public policy which was recognised in *Hilton* v. *Eckersley*. The decision in that case, which was the result of judicial opinions not altogether reconcilable, appears to me to carry the rule no farther than this—that an agreement by traders to combine for a lawful purpose and for a specified time, is not binding upon any of the parties to it if he chooses to withdraw, and consequently cannot be

* For "public policy," see some remarks of Lord Bramwell, in the *Mogul* case (1892, A. C. at p. 45).

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enforced *in invitum*" (*Mogul Steamship Co.* v. *McGregor, Gow & Co.*, 1892, A. C. at 42). S. 3.

In other words, observance of agreements of this sort is voluntary in the sense that the law will not help to enforce them. (Cf., for instance, *Urmston* v. *Whitelegg*, p. 58, and *Mineral, &c.* v. *Booth*, p. 112.) On this point there are some very clear remarks of Halsbury, L. C., in the *Mogul* case (1892, A. C. at p. 39).

It is clear that the sense in which it has been occasionally attempted to explain the phrase "restraint of trade," viz., with reference to the *trade of others than those agreeing* to act in concert, is quite untenable. Thus in the *Mogul* case, Lord Coleridge, C. J., said: "One word in passing only on the contention that this combination of the defendants was unlawful because it was in restraint of trade. It seems to me it was no more in restraint of trade, as that phrase is used for the purpose of avoiding contracts, than if two tailors in a village agreed to give their customers five per cent. off their bills at Christmas on condition of their customers dealing with them and with them only. Restraint of trade, with deference, has in its legal sense nothing to do with this question" (21 Q. B. D. 553).

In the same case "No action at common law," said Bowen, L. J., "will lie or ever has lain against any individual or individuals for entering into a contract merely because it is in restraint of trade" (23 Q. B. D. 619). See also the remarks of Lord James of Hereford, cited p. 162. The words of Lord Halsbury mentioned above confirm this conclusion.

The state of the law before the Act of 1871 is well illustrated by *Farrer* v. *Close* in 1869 (L. R. 4 Q. B. 602). Two Judges of the Queen's Bench (Cockburn, C. J. and Mellor, J.) held* that the purposes of a society which included the support of strikes and were therefore illegal as being in restraint of trade, were those of a trade union and not of a friendly society (within 18-9 V. 63, 44, repealed by 38-9 V. 60), and that the justices were, therefore,

* Following *Hornby* v. *Close*, to which they were parties.

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S. 3. right in dismissing a certain charge; while two others (Hannen and Hayes, JJ.) laid it down that strikes are not necessarily illegal, that there was no evidence that the funds of this society had been applied to support illegal strikes, that its rules did not operate in restraint of trade, that there was nothing to show that the purpose of its establishment was illegal and that the justices were wrong. (The Court being equally divided, the appeal was dismissed.)

In 1869, Sir William Erle, formerly Chief Justice of the Common Pleas, wrote: "A union operates by way of agreement. If all its purposes should be free from unlawfulness, it would be like to a partnership agreement, for breach whereof the remedy is mostly in chancery; if any of its purposes should be unlawful, whether criminal or not, it would be so far void for illegality; if any of its purposes should be criminal, the concert would be a crime. With respect to rights to property, they are not directly affected by the purposes of the owner of the property; but as unions operate by way of agreement, and as the validity of agreements depends on (among other things) the lawfulness of the purposes comprised in such agreement, the purposes of the unions may thus indirectly affect the rights of the members thereof to the joint property of the union. Accordingly members of lawful unions have rights to the property of the union the same as other subjects to other joint property. Members of unions for unlawful purposes have no right to assistance from any court for the fulfilment of the unlawful purposes; but for all other purposes, except the unlawful (if they can be distinctly severed), they are, I believe, in the same position as unions for lawful purposes" (The Law relating to Trade Unions,* Macmillan & Co., pp. 2—8. See p. 64 and pp. 116, 117).

"It appears to me," said Jessel, M. R., speaking of a trade union, "that without the Act it is clearly an unlawful

* "A book more full of careful and accurate law than is to be found in many judgments." Per Esher, M. R., in *Mogul, &c.* v. *Macgregor*, 23 Q. B. D. at 606.

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association; it is an association by which men are not only restrained in trade, but they are bound to do certain acts under a penalty" (*Rigby* v. *Connol*, 14 Ch. D. 491*; 42 L. T. 139; 49 L. J. Ch. 328; 28 W. R. 650).

"Or otherwise." Grammatically these words may mean —(1) "or otherwise criminally liable;" (2) "or otherwise unlawful," *i.e.*, in any way whatsoever; or (3) "or otherwise liable," *i.e.*, civilly. Probably (1) is the meaning intended,† and this is the view of the annotator in the margin of the statutes; and (3) is included in (2). But as it seems that no civil liability can flow from purposes merely in restraint of trade, it matters little practically which interpretation is correct.

The (civil) action for conspiracy, however, is a very different matter.

It is convenient to deal here with the *Mogul* case, 1885—91 (15 Q. B. D. 476; 21 Q. B. D. 544; 23 Q. B. D. 598; 1892, A. C. 25). In the words of Lord Herschell (in *Allen* v. *Flood*, 1898, A. C. at 140): "Certain owners of ships formed an association with the object of securing to themselves exclusively a particular carrying trade. They allowed a rebate on the freights to all shippers who shipped only with members of the association. They also sent ships to ports where the plaintiffs were endeavouring to obtain cargoes, to carry at unremunerative rates in order to secure the trade to themselves. A circular was sent by an agent of the defendants reminding shippers at a particular port that shipments for London by any of the plaintiffs' steamers at any of the ports in China would exclude the firm making the shipment from

* At p. 490 the learned Judge is reported to have said: "The Act recognises the principle that men may enter into any contract they think fit; there is an exception in the case of a contract for borrowing in this country. I hope that exception will always remain in whatever form that contract may be expressed." The writer cannot find any authority for this exception; the two last reports cited do not contain these words.

† But it does not appear what other criminal proceedings could be taken.

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S. 3. participation in the returns of freight during the whole six-monthly period in which they had been made, even though the firm elsewhere might have given exclusive support to the steamers of the combination. It was held by this House that the plaintiffs had no cause of action. This, too, be it observed, though the action was in respect of a conspiracy, what was done being in pursuance of a common course of action concerted by several ship-owners.

"In that case the very object of the defendants was to induce shippers to contract with them and not to contract with the plaintiffs, and thus to benefit themselves at the expense of the plaintiffs and to injure them by preventing them from getting a share of the carrying trade. Its express object was to molest and interfere with the plaintiffs in the exercise of their trade. It was said that this was held lawful because the law sanctions acts which are done in furtherance of trade competition. I do not think the decision rests on so narrow a basis, but rather on this, that the acts by which the competition was pursued were all lawful acts; that they were acts not in themselves wrongful, but a mere exercise of the right to contract with whom, and when, and under what circumstances, and upon what conditions they pleased. I am aware of no ground for saying that competition is regarded with special favour by the law at all events. I see no reason why it should be so regarded."

See also the remarks of Lord James of Hereford in this case, cited p. 162. It must be remembered that the defendants undoubtedly came within the definition of a trade union, p. 111.

But it is submitted that the importance of this action for conspiracy is much diminished since *Allen* v. *Flood* (see p. 155), if it has not disappeared altogether.

Three actions of the kind have been brought since 1871, the date of this Act, viz., the *Mogul* case (p. 53), which failed, *Flood* v. *Jackson* (the original of *Allen* v. *Flood*), where the Judge held that there was no evidence of

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conspiracy to interfere with another's trade (1895, 2 Q. B. 22, *note*), and *Temperton* v. *Russell* (see p. 154), which succeeded.

But that case was, f not overruled (see p. 158), vigorously disapproved in *Allen* v. *Flood* (1898, A. C. 1). See the judgments of Lord Watson (at 94 and 108), of Lord Herschell (at 121 and 143), of Lord Macnaghten (at 154), of Lord Shand (at 168 and 169), and of Lord James of Hereford (at 179). Some of these passages are set out below, pp. 159—62.

As to the present state of the law on the civil remedy for conspiracy,

"The only findings," says Lord Watson (at p. 108), "of the jury which the Court [C. A.] had to consider were: (1) that the defendants had maliciously induced certain persons to break their contracts with the plaintiffs, and (2) that the defendants had maliciously conspired to nduce, and had thereby induced, certain persons not to make contracts with the plaintiffs. There having been undisputed breaches of contract by the persons found to have been induced, the first of these findings raised the same question which had been disposed of in *Lumley* v. *Gye* (2 E. & B. 216). According to the second finding, the persons induced merely refused to make contracts, which was not a legal wrong on their part; but the defendants who induced were found to have accomplished their object, to the injury of the plaintiffs, by means of unlawful conspiracy—a clear ground of liability according to *Lumley* v. *Gye*, if, as the Court held, there was evidence to prove it." That was a successful action for inducing an opera-singer to break her engagement with a manager, and the noble and learned lord seems to be referring to the following words in the judgment of Crompton, J. (at p. 280): "Where two or more parties were concerned in inflicting such injury, an indictment, or a writ of conspiracy at common law, might perhaps have been maintainable, and, where a writ of conspiracy would lie for an injury inflicted by two,

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S. 4.

an action on the case in the nature of conspiracy will generally lie; and in such action on the case the plaintiff is entitled to recover against one defendant without proof of any conspiracy, *the malicious injury and not the conspiracy* being the gist of the action." (See also *Huttley* v. *Simmons*, p. 162.)

Theoretically, then, the common law action of conspiracy still exists, but practically, at any rate, as an obstacle to the operations of trade unions, it has gone, for, while before *Allen* v. *Flood* evidence of conspiracy was or was supposed to be evidence of bad motive, since that case, the only question is: Is the act complained of legal or illegal (whatever the motive was)? and if it is illegal, an action lies, whether there was conspiracy or not. Thus in *Temperton* v. *Russell*, if it was rightly decided, the defendants were liable for the injury caused to the plaintiff by their inducing people not to enter into contracts with him, whether they conspired to do so or not.

There is nothing in sects. 2 and 3 to take *unregistered* unions out of them. See on sect. 6, p. 70.

"**Agreement or trust.**" These words are best understood in connection with sect. 4.

Trade union contracts when not enforceable.

4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed:

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2. Any agreement for the payment by any person of any subscription or penalty to a trade union:
3. Any agreement for the application of the funds of a trade union,—
   (a.) To provide benefits to members: or,
   (b.) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or
   (c.) To discharge any fine imposed upon any person by sentence of a court of justice; or,
4. Any agreement made between one trade union and another; or,
5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

"**Agreement,**" in sect. 3, includes the rules of the union to which members have subscribed, called the "agreement of association," in *Strick* v. *Swansea Tin Plate Company*, (36 Ch. D. 558, in 1887). This follows from that case where one such rule was: "That any person being a member of the said association who shall not act upon and keep all the rules of the said association shall thereupon cease to be a member thereof, and shall forfeit all moneys paid into the said association, and shall under no circumstances or conditions be entitled to any repayment or to any compensation

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S. 4. or allowance in respect of his being a member of the said association, or in respect of any claim which he may then have against the funds of the said association." Under this rule, for the breach of certain rules, admitted to be in restraint of trade, some members were expelled, but, on the winding up of the union, claimed to be entitled to share in the trust funds. It was held that they were properly excluded. North, J., pointed out that no illegality was shown in the rules beyond their being in restraint of trade.

The agreement in question came within sect. 4 (*ibid.*, p. 561), and the learned Judge seems to have thought that if the objection, that the court could not entertain the proceedings, had been taken at the proper time, in this case it might have been successful. The proper time would seem to have been on the hearing of the summons which directed an enquiry by the chief clerk who were entitled to the funds. (Cf. *In re Padstow, &c.*, 20 Ch. D. 137.)

"**Penalty.**" In *Urmston* v. *Whitelegg*, in 1890 (55 J. P. 453; 63 L. T. N. S. 455), the members of an association agreed not to sell mineral waters at less than a particular price for ten years, and to pay a penalty of ten pounds for each breach of this agreement; there was no restriction as to area. The treasurer sued an offending member for the penalty, but a Divisional Court (Day and Lawrance, JJ.) and the Court of Appeal (Esher, M. R., Bowen and Fry, L. JJ.) held that the agreement was in restraint of trade as being unreasonable both as to time and area.

This section does not seem to have been mentioned to either court, nor indeed does this Act at all. Yet the association is well within the definition (see p. 111), and the words here seem conclusive.

"**Any agreement for the application of the funds of a trade union—**

(a.) "**To provide benefits to members.**"

In two Scotch cases in 1874 (*M'Kernan* v. *United Operative Masons' Association*, 1 R., 4th series, 453, and

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Shanks v. *the Same*, Ibid., p. 823), the Court of Session was unanimous that these words prevented the court entertaining an action against a trade union for compensation for an accident to an eye.

In another Scotch case, *Amalgamated Society of Railway Servants for Scotland* v. *The Motherwell Branch of the Society*, in 1880 (7 R. 869), the Court of Session (Lords Ormidale, Gifford, and Young) held that there was nothing in this section to prevent an interdict (or injunction) at the instance of the general trustees against the trustees of a branch applying funds for purposes alleged to be other than those specified in the rules, and they granted one, accordingly, "until the rights of the parties should be ascertained." All their lordships said that their object was merely to preserve the *status quo*. "The terms of the interdict," said Lord Gifford, "must be carefully limited, otherwise the funds might be locked up indefinitely or permanently."

But, shortly afterwards, in a very similar case (*Duke* v. *Littleboy* (49 L. J. Ch. 802), Denman, J., came to a contrary conclusion.

There the plaintiffs, the executive of a central trade union, sought an injunction against the officers and trustees of a branch "to restrain them from dividing funds belonging to the central society and under their control among the members of the branch, or dealing with them contrary to the rules of the society without the consent of the executive," &c. They also asked for payment to the executive of so much of the funds of the branch as were not required for current expenses. The learned Judge refused all relief, holding that the case was within *Rigby* v. *Connol* (see p. 53). The suggestion that it was not a legal proceeding instituted with the object of directly enforcing an agreement, but was for an injunction, intended to stop there at present, to prevent trustees doing what they pleased with or returning to members money in their hands, appeared to him "too great a refinement when you look at the true object and at

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S. 4. the words of the Act, 'legal proceedings,' which are very elastic. Is not this a proceeding instituted with the object of directly enforcing an agreement for the application of the funds of a trade union to provide benefits for members? What other object has it? It is undoubtedly intended to be followed with something further; it would be useless if it were limited merely to keeping the funds locked up"—which is exactly what the Scotch Judges did *for a time*. The learned Judge added, "This is to prevent funds from being dealt with in any other manner except according to the rules, and I think it would be frittering away the meaning of this clause if I were to put any other construction upon it than that this is a proceeding to directly enforce an agreement, &c."

It is submitted that the order of the Scotch court was the right one. There is nothing in the statute to prevent the Court preserving the *status quo*, to use their phrase, though it may well be that the "something further" to which Denman, J., alluded, could only take the shape of a legal process prohibited by this section. The Scotch court certainly did not think that an *interim* injunction, locking up the funds, would be useless, and they perhaps knew that practically such an interdict would settle the dispute. (Lord Young expressly says, "For my own part I would like to advise these parties to agree to divide the money between them so long as there is any left to divide.") And their decree, merely until the rights of the parties should be determined, seems to imply that there was a fit procedure for such determination. And even if there is not, possibly, the policy* of the legislature in denying certain ordinary legal remedies to trade unionists in certain cases, and so forcing members *inter se* to amicable settlement of their disputes, is exemplified here.

It is respectfully submitted that the learned Judge did not give sufficient weight to the word "directly" above. This seems to be borne out by some words in the judgment of

* As to which, Lord Benholme, a Scotch Judge, said he could not see it (in *M'Kernan* v. *United Operative Masons' Association*, in 1 R., 4th ser., p. 453, where the judgments contain some criticisms on this section generally).

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Fry, J., in *Wolf* v. *Mathews*, in 1882 (21 Ch. D. 194), as the contention here made is by that case: "An order that the defendants should pay money to the plaintiffs would be a direct enforcement of an agreement for the application of the funds, but all that is sought here is to prevent the payment of the moneys to somebody else. Either that is no enforcement of an agreement at all, or it is an indirect enforcement." Here the plaintiffs, members of a trade union, sought to prevent other members paying away the funds to a body with which it was alleged that the union had duly amalgamated (under sect. 12 of the Act of 1876), against the wishes of the plaintiffs. Fry, J., overruled the objection that this section prevented the plaintiffs bringing the action, holding that *Rigby* v. *Connol* did not apply. But he added, "it will remain to be seen whether the terms of the Act will eventually permit any relief to be given by the court to the plaintiffs," a very different matter. And it seems that they will not. Neither *Duke* v. *Littleboy* nor the Scotch case was mentioned to the Court.

But this section does prevent a declaration that a plaintiff is entitled to participate in the property of a union, where the rules contain an agreement to provide benefits for members, for such a declaration would be a direct enforcement of such an agreement (*Rigby* v. *Connol*, 14 Ch. D. 482, in 1880). In this case the plaintiff had been expelled from a union on the ground that he had put his son in a "foul shop," and had refused to remove him or pay a fine under a rule of the union. Jessel, M. R., refused to restrain the committee and trustees from expelling him, or to make the declaration prayed for.

In a somewhat similar case in Scotland, in 1885, *Aitken* v. *Associated Carpenters and Joiners* (12 R., 4th ser., 1206), a similar conclusion was unanimously arrived at by the Court of Session, which held that the two (Scotch) cases cited above (p. 58) governed this. Here the member had been expelled for not apologising to the society. The Lord President said: "In regard to the claim for damages I think that that also falls

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S. 4. within the operation of" this section. "The pursuer has been deprived of his chance of participating in the funds of the society, and he proposes to enforce his right to do so by means of a claim of damages."

Rigby v. *Connol* was followed by the Court of Appeal (Alverstone, M. R., Rigby and Collins, L. JJ.) in *Chamberlain's Wharf, Limited* v. *Smith* (1900, 2 Ch. 605; 69 L. J. Ch. 783), where the defendants were members of the committee of an association called the Tea Clearing House (which, by its rules, imposed restrictive conditions on the conduct of the trade of its members). The court, on a consideration of its rules, held that it was a trade union within the Acts, and, therefore, there was no jurisdiction to restrain the committee from expelling a member, as to do so would be to "directly enforce" an agreement (within sect. 4 of the Act of 1871). "*Swaine* v. *Wilson*" (see p. 63), said Lord Alverstone, "certainly does not purport to decide anything contrary to *Rigby* v. *Connol*."

In an Irish case, in 1877, a member of a union obtained a magistrate's order on summons for the payment to him of a sum as benefit money under the rules. The trustees obtained a conditional order for a *certiorari* to remove the magistrate's order into the Queen's Bench to have it quashed on the grounds that such an order was within this sub-section, and that the member had not complied with an essential rule, and it was quashed (*The Operative Carpenters and Joiners* v. *O'Donnell, R. M., and Todd*, 11 Irish Law Times, 282).

An order obtained by guardians of the poor against a union for the payment of a sum for the maintenance of a pauper, a member of the union who, at his death, had been for some time entitled to an allowance from its funds, was held to be an attempt to directly enforce such an agreement, and was quashed (*Winder* v. *Governors, &c., of the Kingston-upon-Hull Corporation*, 20 Q. B. D. 412, in 1888). "Practically," said Mathew, J., "the guardians were suing in the name of the pauper. If this were possible, it would follow that the statute could always be defeated by the

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assignment of a claim against a trade union;" and A. L. Smith, J., agreed with him. S. 4.

"**To provide benefits to members.**" As this object of providing benefits is common to many trade unions and friendly societies, it is sometimes doubtful whether a given body is one or the other, or both. In this connection *Swaine* v. *Wilson* (24 Q. B. D. 252), in 1889, is a very important case. The defendants were the officials of an organisation calling itself a friendly society, but not registered as such. The plaintiff claimed a sum of money under the rules, as being disabled by blindness, "and the only defence set up was that the plaintiff's claim could not be maintained because the society was an illegal society, on the ground that its objects, as set forth in certain of the rules, were in restraint of trade." Denman, J., overruled this defence and found for the plaintiff, and the Court of Appeal (Esher, M. R., Lindley and Lopes, L. JJ.) upheld this judgment. "The first point," said Lindley, L. J., "is as to the bearing of the Trade Union Acts on societies of this kind. The result of the provisions of these Acts is by no means obvious at first sight. . . . The practical results of these enactments when applied to this particular society are as follows: 1. The society is a trade union within the definition clause [see p. 111]. It is legal by virtue of sect. 3." But the Lord Justice held that this action came within sect. 4, and "therefore cannot be maintained unless it can be maintained independently of that section; but," he went on, "although the plaintiff cannot avail himself of sect. 3 of the Act of 1871, he will be entitled to relief if the society is a legal society apart from that section. Is, then, the society a legal society? Illegality is not to be presumed; it must be established by those who rely upon it. The defendants rely on certain rules of this society, and contend—(1) that they are illegal, being in restraint of trade; and (2) that, being illegal, the society itself is an illegal society, and cannot therefore be sued by one of its own members for money payable to him under its rules. Before dealing with this argument it is to

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S. 4. be observed that the particular rule sought to be enforced is not even alleged to be illegal, and that the illegality relied upon is the illegality of other rules and of the objects of the society. . . . Before examining" the rules alleged by the defence to be illegal "in detail, it is desirable to ascertain the principles which render rules illegal simply by reason of their being in restraint of trade. The general proposition that every society which has rules in restraint of trade is unlawful, *i.e.* criminal, and that its members are punishable at common law, was denied by the Court in *Reg.* v. *Stainer* (L. R. 1 C. C. R. 230), and cannot be supported. See also *Hilton* v. *Eckersley* (6 Q. B. 47, p. 58); *Hornby* v. *Close* (L. R. 2 Q. B. 153); per Patteson, J., in *Price* v. *Green* (16 M. & W. 346, at p. 353). Such societies are not necessarily indictable as nuisances or as conspiracies, and their rules, although in restraint of trade, are not necessarily unlawful in any criminal sense. Whether such rules can be enforced by civil legal proceedings is quite another matter, and depends mainly on the reasonableness of the rules. But even if some rules of a society cannot be enforced it by no means follows that other rules of the same society cannot. *Collins* v. *Locke* (4 App. Cas. 674) is a clear authority to this effect, if authority be wanted for so reasonable a proposition.

No doubt if the real object of this society were unduly to fetter trade its rules might all be tainted by the vice of the object, and none of the rules might be enforceable. See *Hornby* v. *Close* and *Farrer* v. *Close* (L. R. 4 Q. B. 602). . . . *If the objects of the society are themselves legal, the introduction of some objectionable rules will at most have the effect of rendering those particular rules invalid.* The other rules will not be affected by them (*Collins* v. *Locke*)."

Thus that peculiar antipathy to trade unions, which was a tradition of the law, has dwindled to the well-regulated sentiment expressed in italics.

It may be added that the learned Judge went *seriatim* through the rules alleged to be illegal, and held that they were valid. "There is no evidence here," he said, "that the

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rules are in fact used for the purpose of supporting strikes or for any illegal purpose. . . . The test of validity in a case like this is reasonableness with reference to the real and legitimate objects of this society: *Collins* v. *Locke*. One of the main objects of this society is to provide a fund for the payment of members when out of work. Rules made for the *bonâ fide* purpose of protecting the funds of the society from claims which can be avoided by reasonable care and management will not be invalid on the ground that they are in restraint of trade, provided the rules are not unduly oppressive or obviously detrimental to the public. To render rules for the above purposes invalid it must be clearly shown that they go beyond what is necessary for those purposes: see *Tallis* v. *Tallis*" (1 E. & B. 391). Cf. the judgments in *Reg.* v. *Stainer* and *Reg.* v. *Tankard*, pp. 116, 117.

It is extraordinary that the case of *Swaine* v. *Wilson* was not cited to the Divisional Court in *Old* v. *Robson* (59 L. J. M. C. 41; 54 J. P. 597), in 1890; and it is submitted that this omission seriously impairs the value of the judgment therein. The question in effect was whether an amalgamated society of carpenters and joiners was a trade union or a friendly society. It was registered under the Trade Union Act of 1871, and a member summoned the secretary under sect. 22 of the Friendly Societies Act, 1875, for non-payment of "sick pay." The magistrates made an order, but the court (Pollock, B., and Wills, J.) were clear that this was wrong. "Here," said the former, "we have a society the objects of which, before the Act of 1871, would have been clearly illegal, as being in restraint of trade. . . . A person joining the society may be expelled if he refuses to work according to the rules laid down, although he merely joined the society as a benefit member. At common law these rules would be illegal, and clearly could not be enforced in any of the courts of this country. . . . In the present case, this society would be altogether illegal were it not for the Act of 1871. . . . I am, therefore, of opinion that none of the rules of this society can be enforced." "In the first instance," said

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Ss. 4, 5.

Wills, J., "I had certainly some difficulty in finding out what it was the appellant relied on, for many of the rules were clearly for the benefit of members; but it ultimately appeared equally clearly that many other of the rules were in restraint of trade, and that the society was in fact for the purposes of restraint of trade. . . . Now, in the case of the society before us, it is extremely improbable that a member could get any benefit from it under the rules which are directed towards the benefit of members, unless he at the same time complied with the regulations relating to trade unions and in restraint of trade."

For the effect of sect. 10 of the Act of 1876 on this section, see p. 107.

Provisions of 18-9 V. 63, 30-1 V. 117, 25-6 V. 89, &c., not to apply to trade unions.

5. The following Acts, that is to say,

(1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same;

(2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same; and

(3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

In *Mineral Water, &c., Protection Society* v. *Booth*, it was pleaded as a defence that the registration of the plaintiff society under the Companies Acts was void, but the point does not seem to have been followed up. See p. 112.

Sect. 2 of the Act of 1876 runs: "Notwithstanding anything in sect. 5 of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on

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the death of a child under ten years of age shall be deemed to be within the provisions of sect. 28 of the Friendly Societies Act, 1875." See p. 102. That Act (38-9 V. 60) was partly repealed by 59-60 V. 25, 107, and the rest by 59-60 V. 26, 18, so that it has been totally repealed; repealed sect. 28 was reproduced (to some extent *verbatim*, but with some modifications) in the Friendly Societies Act, 1896 (59-60 V. 25, 62—67 and 84 (f), (g)), and the Collecting Societies and Industrial Assurance Companies Act, 1896 (59-60 V. 26, 18); hence, by virtue of the Interpretation Act of 1889, we must read for sect. 28 (above) these sections of the Acts of 1896, viz.:— S. 5.

Friendly Societies Act, 1896.

Payments on Death of Children.

Limitation of amount payable.

62. A society or branch, whether registered or unregistered, shall not insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds ten pounds.

Person to whom payment may be made.

63. A society or branch, whether registered or unregistered, shall not pay any sum on the death of a child under ten years of age except to the parent of the child, or to the personal representative of the parent, and upon the production by the parent or his personal representative of a certificate of death issued by the registrar of deaths, or other person having the care of the register of deaths, containing the particulars mentioned in this Act.

Particulars of certificates.

64.—(1.) Where application is made for a certificate of the death of a child for the purpose of obtaining a sum of money from a society or branch, the name of the society or branch, and the sum sought to be obtained therefrom shall be stated to the registrar of deaths.

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S. 5.

(2.) The registrar of deaths shall write on or at the foot of the certificate the words "to be produced to the society or branch (naming the same) said to be liable for payment of the sum of *l.* (stating the same)."

(3.) All certificates of the same death shall be numbered in consecutive order.

Cases in which certificates may be given.

65.—(1.) A registrar of deaths shall not give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years.

(2.) A registrar of deaths shall not grant any such certificate unless the cause of death has been previously entered in the register of deaths on the certificate of a coroner, or of a registered medical practitioner who attended the deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence thereof.

Inquiries by societies.

66. A society or branch, whether registered or unregistered, to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, inquire whether any and what sums of money have been paid on the same death by any other society or branch.

Saving as to insurable interests, &c.

67. Nothing in this Act respecting payments on the death of children shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured.

84. It shall be an offence under this Act if—(f.) a

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society or branch whether registered or unregistered pays money on the death of a child under ten years of age otherwise than is provided by this Act: or

(g.) a parent or personal representative of a parent claiming money on the death of a child produces a certificate of the death other than is in this Act provided to the society or branch from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the provisions of this Act with respect to payments upon the death of children.

Collecting Societies Act, 1896.

Assurances on children's lives by industrial assurance companies.

13.—(1.) The provisions of sections sixty-two to sixty-seven and section eighty-four of the Friendly Societies Act, 1896, relating to payments on the death of children, shall extend to industrial assurance companies, as if the word society where used in those sections included all industrial companies assuring the payment of money on the death of children under the age of ten years.

(2.) An assurance made, or to be made by an industrial assurance company, of a sum of money payable on the death of a child under the age of ten years, which would be valid if effected with a registered society, shall not be invalidated by reason of any provision contained in the Life Assurance Act, 1774.

(3.) The provisions of this section shall extend to industrial assurance companies which do not receive premiums by means of collectors at a greater distance than ten miles from their principal place of business, and to assurances with any such company the premiums

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Ss. 5, 6. in respect of which are receivable at greater periodical intervals than two months.

(On these sects. see Baden Fuller on Friendly Societies, 2nd ed., pp. 84—86, 120, and 154.)

Registered Trade Unions.

Registry of trade unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

"**Rules.**" See the Schedules, p. 100.

"**Such registration shall be void.**"

Does this mean the Registrar shall refuse to register any such union? Probably it does. It is true that the Registrar is thus made the judge of what purposes are unlawful, but, however sect. 2 is construed, the chief part of the judicial burden is taken off his shoulders, for the purposes most likely to be (and which formerly were most frequently) unlawful are those in restraint of trade, and these, by virtue of that section, have ceased to be criminally, and perhaps civilly, illegal; in any case, we have seen (p. 56) that civil liability *on this head* need not be practically considered.

As to other purposes, unless they were manifestly and patently unlawful, a Registrar would be ill advised who refused his assistance,—for instance, if he thought that some of the objects of the union exposed members to an action for conspiracy. See p. 56. The doubt as to the Registrar's power seems to be removed by sect. 8 of the Act of 1876 (which is to be read with this Act, p. 101), as the right to withdraw or cancel the certificate of registration seems to imply that of refusal.

The refusal of a Registrar to register could be challenged

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by a rule *nisi* for a mandamus, and the question of lawfulness would thus be tried by a court. Ss. 6, 7,

N.B.—Registration of trade unions is not compulsory. Who is to register? See s. 17.

Where two trade unions, originally one, applied to be registered by the name of the union of which, before a secession, the members of both had all been members, the Registrar, after hearing evidence from both parties, refused to register either in that name. The Court (Blackburn, Mellor, and Lush, JJ.) held that he was right, and that apart from the Secretary of State's regulations (see sect. 18 (6)), and refused a mandamus to compel him to register either body. (*The Queen* v. *The Registrar of Friendly Societies*, L. R. 7 Q. B. 741 in 1872.) It is clear from 39-40 V. 22, 8, that registration, at first good, may become void. See p. 105.

Buildings for trade unions may be purchased or leased.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

"**Purchase**" here = "buy for money" in the popular sense; it is *not* used in the legal sense of the word. (*In re Amos, Carrier* v. *Price*, (1891) 3 Ch. 159; 65 L. T. 69; 39 W. R. 550.)

This case is a warning to persons who desire to leave land or money to trade unions. The facts appear sufficiently from the judgment of North, J., from which the following are xtracts:—

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S. 7. "By his will the testator appointed two persons to be his executors. . . . Then comes this gift: 'I give, devise, and bequeath unto Thomas Price the property known as 27, Bath Terrace, the conditions to be as follows: that the property be left to him for his life and for the life of his heir, after which it becomes the property of the Boiler Makers' and Iron Shipbuilders' Society.' Then two other houses are given to two other persons in substantially identical words. . . . The conditions in each case are exactly the same as those which I have read. . . . The will goes on, 'And that the further sum of £3 6*s.* 8*d.* each per annum be paid by them to be disposed of as follows: viz., £5 per annum to the Boiler Makers' Benevolent Fund, and £5 per annum to the executors. Should either of the parties refuse or fail to comply with the foregoing conditions they shall forfeit all rights to the property, and the executors shall cause the same to be handed over to the Boiler Makers' Society forthwith.' So that the limitation of each house is complete in itself, to the devisee, for the lives of himself and his heir, after which the house becomes the property of the society. The society, therefore, take in remainder after the estate given by the previous words. The effect of the final clause is that the *interim* estate having come to an end, the remainder to the Boiler Makers' Society is accelerated. . . . There are two bodies mentioned, the Boiler Makers' Society, and the Boiler Makers' Benevolent Fund. I think it is clear from the rules of the society that the Boiler Makers' Benevolent Fund merely means a fund administered by the Boiler Makers' Society, under Rule 39. Under the rules a certain sum is appropriated as a benevolent fund, and it is to be applied under the control of the executive council, and the meaning of this bequest, as I read it, is to add £5 per annum to that fund, so that there will be so much more at the disposal of the persons who administer it. In my opinion, it is a gift to the Boiler Makers' Society, for the purposes of the benevolent fund which they have to administer.

"Then, construing the ultimate gift first, what is meant

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by the property being 'handed over to the Boiler Makers' Society'? That society is a trade union registered under the Act of 1871, but it is not a corporation.* It is a body which exists for certain purposes contemplated by the Act, but for no others. In my opinion the devise and bequest in remainder to the Boiler Makers' Society cannot have any effect at all. In the first place, and independently of the Act, what is the meaning of it? It is, beyond question, in my opinion a perpetuity or a gift tending to a perpetuity. It is not intended for the benefit of the particular individuals constituting the society at the time. It was suggested in argument that the gift might have the effect of vesting the property in all the existing members as joint tenants or tenants in common. But, in my opinion, that is not the effect of the gift. Such a construction would be entirely contrary to the testator's intention, because, instead of the property being administered by the executive body of the Boiler Makers' Society for the purposes of the society, it would belong to a number of individuals as their common property, so that any one of them might at any moment commence an action for partition or sale, thus taking the control away from the society altogether, and simply dividing the property among themselves for their own benefit. That was not the intention of the testator. The only alternative construction is, that it is a gift to the society for the purposes of the society. Beyond all question that is a perpetuity. *Carne* v. *Long* (2 D. F. & J. 75), and the observations of Vice-Chancellor Hall in *In re Clark's Trusts* (1 Ch. D. 497), are conclusive on the point.

"There is this further difficulty. I do not see how this body are capable of taking land at all, whether in perpetuity or otherwise. It is said that, assuming this to be so but for the Act of 1871, that Act authorizes the society to acquire land and to hold it. The latter part of sect. 7 which authorizes the dealing with such land, applies to land which has been properly acquired, but it does not throw any light on

* Cf. pp. 82—4.

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S. 7. the earlier part of the section. It is argued that the society can take these three houses in remainder under the will because it is lawful for them 'to purchase' land, and it is said that 'purchase' means 'acquire otherwise than by descent or escheat"; and, therefore, a devise or bequest of property confers on the person to whom it is made an interest by purchase. In my opinion, that is not the meaning of the word "purchase" as used in this section. No doubt the word is sometimes used by lawyers in that sense, but that is not its natural ordinary meaning. So to construe the word in this section would strain the language very much. It is to be lawful for the society 'to purchase or take upon lease.' If 'purchase' meant 'acquire otherwise than by descent or escheat,' taking on lease would be a 'purchase.' The words 'take upon lease' would be tautologous; they would suggest as an alternative that which is really comprised in the previous word. 'Purchase' and 'take on lease' are put in contrast with one another, 'purchase' referring (I do not say necessarily) to a purchase out and out on payment of a sum of money down, as distinguished from a tenancy at a yearly rent. I do not say that 'purchase' means nothing else; I think it would be satisfied by their buying up an existing lease. But, in my opinion, by 'purchase or take on lease' is meant the acquiring by the payment of money of property which they may acquire either by purchase out and out, or, if they please, by taking lease of it.

"The subsequent words of the section are not immaterial. That which is contemplated is a purchase in the names of the trustees for the time being. How a devise to the society could be a purchase in the names of the trustees for the time being I fail to understand. Then the section goes on to limit the quantity of land to be taken—'purchase any land not exceeding an acre in quantity.' That points to the acquisition of land for purposes connected with the administration of the business of the society, probably for an office. I do not say it is confined to that; there might be other purposes for which it would be desirable to acquire land;

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but that is the kind of thing for which it is considered that the acquisition of land may be desirable. In my opinion, the section has nothing to do with the acquisition of land as forming part of the substratum of the society itself, and it does not authorise this society to take land by devise under the terms of this will. Consequently, the devise to the society is void.

"As to the bequest of £5 a year to the Boiler Makers' Benevolent Fund, I cannot distinguish it from the gift in remainder to the Boiler Makers' Society. The bequest of £5 a year was, in my opinion, a gift to the society for the purposes of their Benevolent Fund by way of anticipation of that which they would get when the life interests came to an end, and, in my opinion, it is a gift connected with the land. It is made payable by the person who has the land, and, in my opinion, it is open to objection on many grounds, one of which is that it is contrary to the *Statute of Mortmain*."

The annual payment to the Benevolent Fund was held void.

Thus, the devises to the society of the leasehold and freehold properties were void as tending to perpetuities; and the gift to the fund was void as being a charge connected with land, and, the nature of the fund being charitable, it offended against the Statutes of Mortmain. Further, it was held that a trade union is incapable of taking land at all.

But note that the bequest to the fund would now be good by virtue of 54-5 V. 73, 3 (The Mortmain and Charitable Uses Act, 1891).

Property of the trade unions vested in trustees.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of a trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control

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S. 8. of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

After the words "trustees of such branch," add: "or of the trustees of the trade union, if the rules of the trade union so provide." 39-40 V. 22, 3. See p. 102.

With this section compare sect. 4 of the Act of 1876. See p. 102.

"**Removal of any such trustees.**" "A trustee," says Mr. Underhill (On Trusts, 4th edition, p. 475), "may be removed from his office:—

α. Under an express power.

β. Under the statutory power contained in the Trustee Act, 1893.

γ. By the Court (under sect. 25 of the Trustee Act, 1893) at the instance of any of the beneficiaries, where he has behaved improperly (*Millard* v. *Eyre*, 2 V. 94, *Palairet*

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In *Linaker* v. *Pilcher and Others* (17 T. L. R. 256) three of the defendants, against whom a jury had awarded damages for libel, were the trustees of the Amalgamated Society of Railway Servants and proprietors of the *Railway Review* in which the libel appeared. The newspaper was the property of the union, and the three trustees were its registered proprietors. It was argued on behalf of the defendants that "property" in sect. 9 of the Act of 1871 meant specific property—*e.g.*, goods or land," but Mathew J. declined to adopt this extremely narrow construction of the section. "There seemed to be no reason why this disability should be "imposed on the trustees in respect of any but specific pro-"perty," and he was satisfied that there could be no such intention on the part of the Legislature, and he gave judgment, with costs, against the defendants, and held that the trustees were entitled to be indemnified out of the funds of the society. The *Taff Vale Case* (see p. 82), he said, did not affect this. He also decided that it was not *ultra vires* of this society "to start a newspaper," as its rules and objects included the improvement of the conditions and the protection of the interests of members (see p. 101). Sect. 23 of the Act of 1871 (see p. 111) and sect. 16 of that of 1876 (see p. 98) did not deprive the society of this right.

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v. *Carew*, 32 B. 567), or is incapable of acting properly (*Buchanan* v. *Hamilton*, 5 V. 722; and *Re Lemann*, 22 C. D. 633; and *Re Phelps*, 31 C. D. 351, where trustees were incapable from old age and infirmity), or is a felon or dishonest misdemeanant, or a recent bankrupt (*Re Adams's Trust*, 12 C. D. 634; *Re Barker*, 1 C. D. 43), or is residing permanently, or for a long or indefinite period, abroad (*Buchanan* v. *Hamilton*, *supra*; *Re Bignold* 7 Ch. App. 223; and *Re The Moravian Society*, 26 B. 101), or cannot be heard of (*Re Harrison*, 22 L. J. Ch. 69)." Ss. 8, 9.

Actions, &c., by or against trustees.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any court of law or equity touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their

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S. 9. names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

This section says nothing about legal proceedings by or against individual members, *as such*, of unions, but it may be mentioned here that it never has been suggested that a union, in furthering the interests of a member (provided, of course, they coincide with the legitimate objects of the society), would render itself liable to an action for "maintenance." For instance, there was no hint of such a possibility in the Scotch case, *Gordon* v. *Pyper*, in 1892 (20 R. (H. L.) 23), where the Appeal Committee (Lords Watson, Macnaghten, Field, Morris, and Hannen) granted the appellant's petition to appeal *in formâ pauperis*, although the respondent objected that the appellant was supported in the litigation by the Firemen and Sailors' Union. They distinguished *Bowie* v. *Marquis of Ailsa* (L. R. 13 App. Cas. 371).

"**Trustees.**" The trustees seem to be the only persons who can be sued as representatives of a trade union, unless a judge orders certain members to defend on behalf of the rest, as was done in *Wood* v. *McCarthy* (1893, 1 Q. B. 775)—where apparently there were no trustees—under Order 16, r. 9 (see below); a Divisional Court (Wills and Lawrance, JJ.) upheld Bruce, J.

"**Officer.**" In *Temperton* v. *Russell* (1893, 1 Q. B. 435; 9 T. L. R. 298, and 304) a very important point of procedure was determined. The writ sued the various *officials* of the unions "as well on their own behalf as on behalf of and representing all the members of each of the said societies and joint committee to which they respectively belong." It was alleged that such a form was good within the meaning of Order 16, r. 9, which runs (as it did then): "Where there are numerous persons having the same interest in one cause or matter, one or more

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of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested." A Master and a Judge refused to strike the words out, but a Divisional Court (Coleridge, L. C. J., and Hawkins, J.) and the Court of Appeal (Esher, M. R., Lindley and Bowen, L. JJ.) reversed their decision, and held that the writ must be amended by striking out the words indicating that the defendants were sued in a representative capacity. "The expression, 'having the same interest in one cause or matter,' only extends, we think," said Lindley, L. J., "to persons who have or claim some beneficial proprietary right which they are asserting or defending in the cause or matter.* . . . The truth is that this is an attempt to stretch the rule to cases to which it is wholly inapplicable, and the attempt is only plausible by reason of the ambiguity of the expression 'same interest.' The case of *Springhead Spinning Co.* v. *Riley* (L. R. 6 Eq. 551), relied on by the plaintiff's counsel, is no authority for them. In the first place, the case was overruled by the Court of Appeal in *Prudential Assurance Co.* v. *Knott* (L. R. 10 Ch. App. 142), &c." In *Springhead Spinning Co.*, &c. v. *Riley*, in 1868, the defendants were officers of a trade union, and had given notice to workmen, by means of placards and advertisements, that they were not to hire themselves to the plaintiffs, pending a dispute between the latter and their union. The placard read, "Wanted, all well-wishers to the Operative Cotton Spinners, &c., Association not to trouble or cause any annoyance to the Springhead Spinning Company, Leeds, by knocking at the door of their office until the dispute between them and the self-actor minders is finally terminated. By special order." The

* For comment on this judgment see *Wood* v. *McCarthy*, (1893) 1 Q. B. at 778. For criticism of it see *The Duke of Bedford* v. *Ellis and Others*, in the House of Lords (17 T. L. R. at 140 in 1900), where *inter alia* Lord Macnaghten says: "It is rather a pity when a case like *Temperton* v. *Russell* finds its way into the reports. The attempt made there to invest the defendants with a representative character was absurd on the face of it."

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S. 9. plaintiffs asked for an injunction restraining the issue of the placards, &c., alleging that by means thereof the defendants had, in fact, intimidated and prevented workmen from seeking employment with them, that they were prevented from continuing their business, and that the value of their property was thereby diminished. Vice-Chancellor Malins held that the acts alleged amounted to crime, and that they also tended to destroy or deteriorate property, and, therefore, it was a proper case for the Court to interfere by injunction. The case was overruled in 1875, when Lord Cairns pointed out that the learned Judge who decided it "must be taken to have expressed the same opinion as he expressed in the case of *Dixon* v. *Holden* (L. R. 7 Eq. 488)," as to which case James, L. J., added that he held without doubt that the statement of the law was not correct, remarking that the Vice-Chancellor "was, by his desire to do what was right, led to exaggerate the jurisdiction of this Court in a manner for which there was no authority in any reported case, and no foundation in principle."

It is surprising that this case was not mentioned to the Court by either side in the case of *Trollope and Others* v. *The London Building Trades Federation and Others* in 1895 (72 L. T. Rep. 342; 12 T. L. R. 373). According to one headnote, "In consequence of a dispute with reference to an alleged preferential employment of non-union men by a building firm, a trade union published a poster, headed 'Trollope's Black List,' containing the names of non-union men employed by the firm." The employees had been called out by the Federation, but a large number remained. The poster was a large yellow one with a black border, and gave the names and addresses not only of the non-union men but of those who had not come out on strike, and was distributed in the resorts of the workmen. Messrs. Trollope and some of the workmen whose names had been published brought an action against the Federation and certain others, and, before the hearing, moved for an *interim* injunction to restrain the publication of the black list. A member of the

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firm made an affidavit that that publication injured the business of the firm, and did other harm to their interests, and the plaintiff workmen swore in the same way that it would bring them into odium and contempt with their fellow-workmen, prevent them from obtaining employment, and that its object was to ruin them in their business. Kekewich, J., following the judgments in *The Mogul Steamship Company* v. *MacGregor* (66 L. T. Rep. 8 ; (1892) A. C. 51), and *Monson* v. *Tussauds, Limited* (70 L. T. Rep. 335 ; (1894) 1 Q. B. 671), granted an interlocutory injunction against the defendants, their officers, agents, and servants, "and the other defendants by name only," and his decision was upheld by the Court of Appeal (Halsbury, L. C., and Lindley, and A. L. Smith, L. JJ.), which practically declined to go into the merits of the case before the trial.

S. 9.

The trial came on before Hawkins, J., and a special jury in 1896, when the plaintiffs claimed damages and an injunction. The defendant Federation did not appear, and the other defendants admitted the publication of the black list, but pleaded that its publication was justified by the law, that every statement in it was true in fact, that it was published without malice, and in the legitimate and *bonâ fide* interests of the defendant Federation, of which they were officials.

The facts were not substantially in dispute, and the jury found that the black list "was not published *bonâ fide* for the purpose of protecting the interests of the association, but maliciously to compel Messrs. Trollope to dismiss Eves and Iliff, or others who were under contracts to serve them, that it was published vindictively, that it was calculated to injure, and did injure, Messrs. Trollope and their workmen, that it injured Messrs Trollope financially, but not the workmen" ; and (apparently) they ultimately fixed the damages at £500. Judgment was given for that amount, and the injunction was made perpetual.

It will be observed that neither Mr. Justice Kekewich nor Mr. Justice Hawkins felt any difficulty in granting an

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S. 9. injunction against a trade union as such (as well as against members or officials of one).

The point seems never to have been discussed till the case of the *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants and Bell and Holmes* (reported in *Law Times*, September 8th, 1900), when Mr. Justice Farwell went thoroughly into the question in a written judgment. The defendant union had taken out a summons to strike out their name as defendants (on a motion for an *interim* injunction to restrain picketing, &c.), on the ground "that they could not be sued, being neither a corporation nor an individual, and could not be made parties either in that capacity or in any other." The learned Judge dismissed the summons, and granted an injunction against the union, but the Court of Appeal (A. L. Smith, M. R., Collins and Stirling, L.JJ.) held that the union as such could not be sued, and dissolved the injunction.

The Master of the Rolls, in delivering the judgment of the Court, said: "The point is important, for if a trade union can be sued in the manner proposed in this case, the funds of the union will be liable to be taken in execution under a judgment obtained against the union in the society's name. . . . The learned Judge, in the early part of his judgment, says that which is undoubtedly the truth, namely, that 'a trade union is neither a corporation nor an individual, nor a partnership between a number of individuals,' and in this we entirely agree. There can, in our judgment, be no doubt that at common law the defendants could not be sued in the name in which they are sued in this action, any more than a tradesman could sue a defendant in the name of a West End club for goods supplied by him to that club, for the simple reason that the name of a club is not the name of a corporation nor of an individual, nor of a partnership, which apart from statute are the only entities known to the law as being capable of being sued." . . . Speaking of the Trade Union Acts, the Master of the Rolls said: "Now, in considering these Acts, it is in the first place to be pointed out

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that there is no section empowering a trade union to sue or to be sued in its registered name, nor is there any provision as to constituting the society a corporation, so that it may be sued as such. And this is the more remarkable if, as the learned Judge holds, it was the intention of the legislature that a trade union was to be sued in its registered name, seeing that when it was desired that a society should sue or be sued in its registered name the legislature knew well how in plain terms to bring about such a result. For instance, in the Companies Act, 1862 (25-6 V. 89), by sect. 6 it is enacted that seven or more persons may be registered, and the section goes on to enact that after registration they shall form an incorporated company, with or without limited liability. The first part of the section is re-enacted in the Trade Union Act* of 1871, but the last part about incorporation is pointedly omitted. . . . It is true that the Amalgamated Society of Railway Servants is the registered name of the trade union sued, but how does this fact of itself, without more, render the society an entity capable of being sued in that name? The mere registration has no such effect. Mr. Justice Farwell does not suggest in his judgment that in the Trade Union Acts he can find any sections in terms authorising an action against a trade union in its registered name, or that by the Acts trade unions are incorporated. But the learned Judge says the legislature has legalised it—*i.e.*, the trade union—and it must be dealt with by the Courts according to the intention of the legislature. The learned Judge says: 'Although a corporation and an individual or individuals may be the only entities known to the common law who can sue or be sued, it is competent to the legislature to give to an association of individuals, which is neither a corporation nor a partnership nor an individual, a capacity for owning property and acting by agents; and such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability, to the extent of such property, for the acts and defaults of such agents,—in other words, the liability of being sued in its

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* In sect. 6.

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S. 9. registered name. It is with regard to this last paragraph, which is the basis of the judgment, that, with all submission, we cannot agree. When once one gets an entity not known to the law, and therefore incapable of being sued, in our judgment, to enable such an entity to be sued, an enactment must be found, either express or implied, enabling this to be done; and it is not correct to say that such an entity can be sued unless there be found an express enactment to the contrary. Where, in the Trade Union Acts, is to be found any enactment, express or implied, that a trade union is to be sued in its registered name? Express there is none, and it is clear that a trade union is not made a corporation. . . . In our judgment this has not been omitted in error. . . . Moreover, by sect. 9 of the Act of 1871 it is expressly enacted that the trustees of a trade union registered under the Act, or any other officer of the union who may be authorised to do so by the rules, may bring or defend any action in any court of law touching the property of the trade union—a most remarkable section if, as is argued for the plaintiffs and held by the learned Judge, the purview of the Act is that a trade union can be sued in its registered name. If this were so, what is the good of this section expressly enabling the trustees or other officer of the union to sue or be sued in respect of property? We can find nothing in the Acts wherefrom the inference is to be drawn that the legislature has enacted that a trade union can be sued in its registered name, but, by reason of the language of the Acts, and what is omitted therefrom, if necessary, we should find the exact contrary. In our judgment, for the reasons above, a trade union cannot be sued as is now attempted.

"Sects. 15 and 16 only show, as regards penalties, that the funds of the union may be got at. The cases [viz., *Mersey Dock Trustees* v. *Gibbs* (L. R. 1, H. L. 93); *Ruck* v. *Williams* (3 H. & N. 308); *Whitehouse* v. *Fellowes* (10 C. B. N. S. 765)] which are relied on by the learned Judge do not affect the question which now arises for decision. The case of *Temperton* v. *Russell* [see p. 78] referred to during

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the argument in this court, seems to have been argued and decided upon the assumption that an action such as the present was not maintainable" (17 T. L. R. 68; 49 W. R. 101; (1901) 1 Q. B. 170).

Ss. 9, 10, 11.

In *Charnock* v. *Court*, in 1899 (80 L. T. N. S. 564, see p. 146), all the members of a union were added as plaintiffs, because, the union being (apparently) unregistered, there was no one who could sue on behalf of other members. The point is not expressly mentioned, but it would seem that the learned Judge followed *Temperton* v. *Russell* (see p. 78) in his construction of Order 16, r. 9, as it was at his suggestion that the writ was amended as stated.

Limitation of responsibility of trustees.

10. A trustee of any trade union registered under this Act, shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Treasurers, &c., to account.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them

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Ss. 11, 12. to be appointed: and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

Punishment for withholding money, &c.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply

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the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court, to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied, improperly; and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have

S. 12.

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Ss. 12, 13. been previously obtained for the same offence under the provisions of this Act.

With this section must be read sect. 5 of the Act of 1876. See p. 108.

In a case which occurred in 1885, a (former) treasurer had been convicted under this section, and had been ordered to refund a sum which he had fraudulently misapplied, and to pay a fine and costs; in default, he had been imprisoned for two months with hard labour. The secretary, then, on behalf of the union, brought an action in the county court to recover the money misappropriated, but he was nonsuited. The Court (Field and Manisty, JJ.) refused to set aside the nonsuit, remarking, "The society has no further remedy; to allow the defendant to be sued after he has suffered the imprisonment would be most oppressive" (*Knight* v. *Whitmore*, 33 W. R. 907).

Registry of Trade Union.

Regulations for registry.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

(1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act:

(2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:

(3.) No trade union shall be registered under a name identical with that by which

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any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public:

(4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as herein-after mentioned to be transmitted annually to the registrar:

(5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with:

(6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the

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SS. 13, 14. 15.

registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

"**The registrar under this Act.**" See sect. 17.

"**Withdrawn or cancelled.**" There is nothing in this Act to authorise withdrawal or cancellation; but see sect. 8 of the Act of 1876, p. 105.

"**Regulations.**" See Appendix B., p. 199.

Rules of registered trade unions.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:

(1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act:

(2.) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

Registered office of trade unions.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the

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registrar and recorded by him; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act. Ss. 15, 16.

Annual returns to be prepared as registrar may direct.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also

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Ss. 16, 17, 18.

every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Registrars.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

These offices were instituted in 1846 (by 9-10 V. 27); the office from which they sprang seems to date from 1829 (10 Geo. IV. 56). See 59-60 V. 25, 1.

Circulating false copies of rules, &c. a misdemeanor.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to

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any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor. Ss. 18, 19.

"**Of a misdemeanor.**" See sect. 23, p. 98. Punishment might be by fine or imprisonment without hard labour, or both, or by being put under recognizances. See Stephen, Digest of Criminal Law, Art. 23.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts. Summary proceedings for offences penalties, &c.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows:

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners; that is to say,

(A.) In England,

(1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute:

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S. 19.

(2.) In the city of London, of the Lord Mayor or any alderman of the said city:

(3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland,

(1.) In the police district of Dublin metropolis, of a divisional justice:

(2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court under the provisions of the Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified

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or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor. Ss. 19, 20.

"**The Summary Jurisdiction Acts.**" Defined, 52-3 V. 63. 13, (7), (8), (9), and including any Act, past or future, amending the principal Acts.

Appeal to quarter sessions.

20. In England or Ireland if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally

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Ss. 20, 21.

to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

"**Quarter sessions.**" The remainder of the section, after these words, is repealed, as regards England *only*, by 47-8 V. 43, 4 (the Summary Jurisdiction Act, 1884).

Appeal in Scotland as prescribed by 20 Geo. 2, c. 43.

21. In Scotland it shall be competent to any person to appeal against any order or conviction

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under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force. Ss. 21, 22.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

Interested person not to act as a member of a court of appeal.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

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S. 23.

Definitions.

Definitions.

23. In this Act—

As to the term "Summary Jurisdiction Acts":

The term Summary Jurisdiction Acts means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanor" means a crime and offence.

As to "trade union."

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more

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of its purposes being in restraint of trade; Provided that this Act shall not affect— Ss. 23, 24.

1. Any agreement between partners as to their own business;
2. Any agreement between an employer and those employed by him as to such employment;
3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

Part of this section is repealed by the Act of 1876, s. 16. See p. 111.

Repeal.

Repeal of Trades Unions Funds Protection Act, 1869, as herein stated.

24. The Trades Unions Funds Protection Act, 1869, is hereby repealed.

Provided that this repeal shall not affect—

(1.) Anything duly done or suffered under the said Act:

(2.) Any right or privilege acquired or any liability incurred under the said Act:

(3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act:

(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing

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S. 42.

any such liability, penalty, forfeiture, or punishment as aforesaid.

Repealed by 46-7 V. 39, 1 (the Statute Law Revision Act, 1883). The proviso in sect. 1 prevents the Act (32-3 V. 61) repealed by this section (24), reviving.

That Act was by sect. 2 to expire on August 31st, 1870; it was continued in force by 33-4 V. 10, 3, till at least August 31st, 1871, by which time this Act had repealed it.

SCHEDULES.

First Schedule.

Of Matters to be provided for by the Rules of Trade Unions Registered under this Act.

See 18 & 19 Vict. c. 63, s. 25.

1. The name of the trade union and place of meeting for the business of the trade union.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

"Rules." In case of doubt as to the meaning of rules, application may be made to the Court to determine the construction.

This was the case *In re Durham Miners' Association; Watson* v. *Cann* (17 T. L. R. 39) in 1900. "The rules of a trade union, the management of which was vested in a council, under whom an executive committee acted, provided that no lodge was to give notice of a strike until its case had been laid before a council or committee meeting for their approval; and that any lodge, or number of men in a

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lodge, ceasing work without the approval of either the committee or council should forfeit all claims on the union. A number of men in a lodge ceased work on account of a dispute with their employer without having laid their case before the council or the committee for their approval. The executive committee refused to grant strike pay, but the council on appeal allowed it." Upon a summons taken out by the trustees, Cozens-Hardy, J. held that the resolution of the council was *ultra vires* (and, therefore, the treasurer could not properly pay the sums in question), and the Court of Appeal (Rigby, Vaughan Williams, and Romer, L. JJ.) confirmed this view. See Introduction, p. 19.

S. 1.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

TRADE UNION ACT (1871) AMENDMENT ACT, 1876.

39 & 40 VICT. c. 22.

An Act to amend the Trade Union Act, 1871.

[30th June, 1876.

1. This Act and the Trade Union Act, 1871, herein-after termed the principal Act, shall be construed as one Act, and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."

Construction and short title.

See p. 48.

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Ss. 2, 3, 4.

Trade unions to be within s. 28 of Friendly Societies Act, 1875.

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

See p. 66.

Amendment of s. 8 of principal Act.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch": The said section shall be read and construed as if immediately after the herein-before recited words there were inserted the words "or of the trustees of the trade union, if the rules of the trade union so provide."

See p. 75.

Provision in cases of absence, &c. of trustee.

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of

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trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

"The legal establishment thereof" = the registration thereof, according to law. See p. 70.

Jurisdiction in offences.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

See p. 86.

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Ss. 6, 7.

Registry of unions doing business in more than one country.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

Life Assurance Companies Acts not to apply to registered unions.

7. Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

The Act of 1870 (33-4 V. 61) applies to unregistered trade unions which come within the meaning of "company" as there defined (sect. 2), viz., "any person or persons, corporate or unincorporate, not being registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom."

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S. 8.

Withdrawal or cancelling of certificate.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases:

(1.) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct:

(2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months previous notice in writing, specifying briefly the ground of any proposal withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

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Ss. 8, 9, 10.

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

See p. 89.

"**And in the following cases,**" an ungrammatical phrase for "and except in the following cases."

Membership of minors.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

Nomination.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of

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the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

"**Fifty pounds.**" "One hundred pounds" must be read, by 46-7 V. 47, 3.

This section will not be enforced by a court of law owing to sect. 4 of the Act of 1871 (*Crocker* v. *Knight*, (1892) 1 Q. B. 702). See p. 56. In that case the plaintiff was the executrix of the deceased member who had nominated her to receive the funeral money, due under the rules of the society to his nominee. The branch disputed her claim, and she brought an action in the County Court against the union by its secretary. It was there admitted that the deceased had been a member, and that £12 was the amount due, if anything. The County Court Judge overruled the objection that sect. 4, 3 (a) of the Act of 1871 prevented the Court having jurisdiction to entertain the action. Charles, J., refused the defendant a writ of prohibition to restrain all proceedings, but a Divisional Court (Lawrance and Wright, JJ.) set aside that order, and granted the writ prayed for. The plaintiff appealed, but the Court of Appeal (Lindley and Kay, L. JJ.) upheld the Divisional Court. "The question is," said Lindley, L. J., "whether the words 'the trade union shall pay' constitute an obligation which can be enforced by action. Now, I think the object of this section was not to depart from the policy of the earlier Act, but was entirely different, namely, to enable persons of sixteen years of age and upwards, without the necessity of making a will and incurring the expense of probate, to give away any small

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Ss. 10,11.

sums of money that may be due to them from the trade union. . . . I do not think, looking at the first and other sections of that Act, that we can find any sufficient indication of an intention to depart from the terms of sect. 4 of the first Act so as to alter the policy of the legislature, which was to prevent the introduction of legal proceedings into the affairs of trade unions, and to save trade unions from being subjected to the expense of litigation.

The question really turns on the construction of the two Acts. We are asked to read sect. 10 of the second Act as overruling sect. 4 of the first, and to hold that there is, therefore, a distinct statutory obligation on the part of the trade union to pay; but when we are told by the legislature to read the two Acts as one, we must read them in such a way as to make them consistent. In my opinion, the trade union is subject to no more obligation to pay than it was before the Act of 1871 was passed. Sect. 4 is clear; no action shall be brought for any such sum of money as is sought to be recovered here." Kay, L. J., in concurring, said: "The money is a debt which could not be recovered by the executor or administrator of the deceased member if he had one . . . it would be an extraordinary construction of this section to say that although the member cannot sue, or his executor or administrator cannot sue, yet the nominee of the member, that is, a person brought into the matter by the legislature, evidently to avoid the expense of probate, shall have power to put the trade union to the expense of an action . . . the section is intended like the corresponding provisions of the Friendly Societies Act, to prevent a trade union, so far as it is a benefit society, from being subjected to the expense and trouble of litigation by its members. . . . I think sect. 4 is intended to prohibit the very kind of litigation we have in this case."

Change of name.

11. A trade union may, with the approval in writing of the chief registrar of Friendly Societies, or in the case of trade unions registered and doing

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business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two thirds of the total number of members. Ss. 11, 12, 13.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

Amalgamation.

12. Any two or more trade unions may, by the consent of not less than two thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

"**Dissolution,**" *i.e.*, with or without any dissolution of such trade unions or of either or of any of them or with or without any division of the funds of such trade unions or of either or of any of them.

Registration of changes of names and amalgamations.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied

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Ss. 13, 14, 15.

with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

Dissolution.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the central office herein-before mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

Penalty for failure to give notice.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the

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union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the chief or any assistant registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Ss. 15, 16.

Definition of "trade union" altered.

16. So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows:

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

"**The principal Act**" is that of 1871. See p. 101.

It follows, therefore, that societies proposing actually to carry on trade cannot be registered as trade unions, and registration has actually been refused in such cases.* The subject is a branch of Company Law, but it may be added that for such societies in connection with trade unions a

* Information kindly supplied by the Registrar of Friendly Societies for England.

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S. 16. convenient machinery is provided by the Industrial and Provident Societies Acts, 1893 and 1894 (56-7 V. 39, and 57-8 V. 8).

In *Mineral Water Bottle Exchange and Trade Protection Society* v. *Booth* (36 Ch. D. 465; 57 L. T. 573; 36 W. R. 274, in 1887) the facts were as follows: A co-plaintiff (Cox) and the defendants were both mineral water manufacturers, and were both members of the society, the other co-plaintiff, incorporated under the Companies Act, 1862, for the purpose of protecting the property and promoting the interests of the members. A carman who had been in Cox's employment for about four years left him, and on the same day applied for employment to the defendants, who wrote to the plaintiff inquiring his character. The latter alleged nothing against his character, but protested against his being employed by the defendants in consequence of the 44th of the articles of association—viz., "No member of the society shall employ any traveller, carman or out-door employé who has left the service of another member without the consent in writing of his late employer, until after the expiration of two years from his leaving such service." The defendants, however, engaged the carman, and the plaintiffs sought to restrain them from employing him.

The defendants pleaded that the society was a trade union under the Trade Union Acts, and that the registration under the Companies Act was void. See p. 70. They also pleaded that the article 44 was unreasonable, and void as being in restraint of trade.

Chitty, J., in refusing the injunction, said: "It appears to me with reference at least to this 44th article (and I have not to go beyond that on this motion) this is a trade union. . . . It appears to me that this 44th article is, in any view of the case, an unreasonable restraint of trade. It is contained in the articles of association of this company, and it is not an agreement between the employer and the employed, but it is an agreement between employers of labour, who may amount . . . to the large number of 500, and the agreement relates to carmen amongst others. . . . According to the evidence

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S. 16.

on one side a man can almost at once discharge the duties of a carman, as little skill is required beyond competency to drive horses, and some honesty. According to the other side a somewhat high degree of skill is required, but it is not a high degree. It is, for instance, in this part of the kingdom, a knowledge of the streets of London and of the locality about London. The article is in no sense framed with reference to soliciting orders or the like, but it is a harshly conceived absolute agreement that no member—that is to say, no one of those 179 members at the present moment—shall employ any carman who has left the service of another member without the consent in writing of his late employer, without any limitation of space except that limitation which . . . exists by reason of the nature of the association. As the members may be in any part of the world, so the area to which this agreement would apply would be co-extensive, the only limitation being a limitation of two years in point of time. There may be the most honest and respectable carman that can be conceived. If he has the misfortune to discharge himself lawfully, he falls within this rule, not as being himself bound, but, according to the contention put forward, the members of the association, these 179 persons at the present moment, must all close their doors to him and refuse to employ him. I think this is an unreasonable restraint of trade, and there is no business here of a society to be protected. The business that is intended to be protected, as I understand the argument of the plaintiffs, is the business of each individual member, but the agreement is not the agreement of Mr. A. and Mr. B., mere members of the society, it is the agreement of all the members with the society itself. I think that this is an unreasonable restraint. It is quite enough for me to dispose of this motion on that ground, and I think it is an agreement which I ought not to enforce as between the society and any member, or as between any members of the society itself."

The Court of Appeal (Cotton, Bowen, and Fry, L. JJ. affirmed the judgment of Chitty, J. "We have not," said

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S.16. the former, "to deal with the question here as to whether the members of this body might have enforced a covenant exclusively pointed to preventing the members from injuring one another in a particular way by improperly acquiring information which had been gained by the servants of one another. The 44th article . . . is perfectly general. . . . So that generally if any out-door employé were in the service of any member of this society, even for a week, and then left, he could not be employed, if this covenant is a good one, by any other member of the association. That, of itself, might be used most oppressively, and although in the present case . . . it might be proper, if the covenant were aptly framed, to restrain the defendants from employing a particular individual so as to prejudice his late employer by using knowledge he had got confidentially, yet there is no restriction or limitation in this covenant at all. It is very like the case which Lord Justice Bowen referred to of *Hilton* v. *Eckersley*, [see p. 50] in which there was an attempt to regulate the way in which certain members of the association were to carry on their trade. That is a difficulty here. But in my opinion the great objection to this covenant is that it might be used most oppressively by preventing a man who had never been in any confidential position, and never desired improperly to use the information he had then acquired, from getting employment from another master in the trade which he knew most about and which he could best carry on." "It appears to me," added Fry, L. J., "that a covenant might have been framed which possibly might have been good, that is to say, that the masters might have contracted not to use in competition with one another knowledge confidentially obtained. It is said the object of this clause is to give effect to that intention. But it has gone far beyond it. . . . I think . . . the restraint of trade and of the liberty of her Majesty's subjects in gaining employment is far in excess of any legitimate purpose of the contracting parties."

Part of the headnote to this is: "Whether the society was to any and what extent within the *Trade Union Acts*, 1871 & 1876, *quære*."

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31-2 V. 116.

An Act to amend the Law relating to Larceny and Embezzlement. [31st July, 1868.

The name of this statute is fixed by 59-60 V. 14, The Short Titles Act, 1896.

Member of co-partnership guilty of converting to his own use, &c. property of co-partnership liable to be tried as if not such member.

1. If any person, being a member of any co-partnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such copartnership or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners.

"At common law a co-owner could not steal property from his other co-owners. This was altered in 1868* by 31-2 V. 116, commonly called Mr. Russell Gurney's Act. It was passed in consequence of cases occurring in which trade

* "1867" is a misprint. The Act was sometimes called "The Recorder's" (*e.g.*, *Reg.* v. *Blackburn*, 11 Cox, p. 161), as Mr. Russell Gurney, at whose instance it was passed, was Recorder of London.

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S. 1. unions had been robbed with impunity by persons in their employment, who were also members of the body, and so co-owners of its funds" (3 Stephen, History of the Criminal Law, p. 159). Such* being its origin, it is the more remarkable that the prisoner in *Reg.* v. *Stainer*, in 1870 (L. R. 1 C. C. R. 230; 11 Cox, 488; 39 L. J. M. C. 54), was indicted, not under this Act, which was not even mentioned, but, apparently, under 32-3 V. 61. See p. 119.

The offence was substantially the same as that alleged in *Reg.* v. *Blackburn* in 1868 (11 Cox, 157), which counsel said was the first prosecution under Russell Gurney's Act.

As the Act of 1869 (32-3 V. 61) is no longer in force (see p. 119), *Reg.* v. *Stainer* is dealt with here. The prisoner was a local secretary and member of the "Power Loom Carpet Weavers' Mutual Defence and Provident Association of Kidderminster and Stourport"; neither the original nor the revised rules of the society were enrolled or certified under the Friendly Societies Acts. It was in respect of money received by the prisoner as local secretary that he was charged at Quarter Sessions with embezzlement. For the defence it was contended that the society was established, in part at least, for an illegal object, and for this purpose certain rules were relied upon, and it was urged that an acquittal should be directed. This objection was overruled and the prisoner was found guilty. In stating a case, the chairman referred *seriatim* to the rules impugned, and added that the society had occasionally contributed to the support of men on strike, otherwise there was no evidence that the funds were used for any illegal purpose. The Court for Crown Cases Reserved (Cockburn, C. J., Byles and Keating, JJ., Pigott and Cleasby, BB.) was unanimously of opinion that the conviction was right. Cockburn, C. J., said: "In this society there is nothing criminal either in its purposes or its operation. Its primary objects are laudable. There are, however, one or two rules with reference to the seeking of employment and other matters which would come within the purposes of a trades union."

* But see Introduction, p. 7.

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Referring to 32-3 V. 61 (see p. 119), his Lordship added, "This statute is, however, at all events an indication of the intention of the Legislature that trades unions shall have rights of property which are to be protected by the criminal law. I think, therefore, that it is clear that societies such as this are not criminal, because the Legislature could never have intended that a criminal society should have the benefit of the Friendly Societies Act. It is absurd to suppose that it was intended that these societies should be able to prosecute before justices those who had embezzled their money, and yet should not be able to indict a criminal at the Assizes. The recent statute is equivalent to a declaration by the Legislature that societies having rules in restraint of trade have no defect on that account in their title to property in proceedings in criminal law." Byles, J., said: "Some of the objects of this society may be unlawful, as being in restraint of trade and so void, but the objects are not criminal." Keating, J., said: "The only illegality suggested in this case is the object of one or two rules which are in restraint of trade. It may be impossible to enforce these rules as being illegal, in the sense of being void, but are they within the criminal law? Is the illegality such as to deprive the funds of the society of the protection given by the criminal law? I think not." Cleasby, B., said: "The foundation of the argument against the conviction is, that this society could have no servants. I think this is not the law."

Cf. Lindley, L. J.'s judgment in *Swaine* v. *Wilson*. See p. 63. *Reg.* v. *Stainer* was approved in *Reg.* v. *Tankard* in 1893 (1894, 1 Q. B. 548; 63 L. J. M. C. 61; 17 Cox, 719), where the indictment was drawn under this Act (1868). "The prisoner was the treasurer and a member of a trading club which was an unregistered association of more than twenty persons, such as is prohibited from being formed by sect. 4 of the Companies Act, 1862," and was convicted of embezzlement. The Court for Crown Cases Reserved (Coleridge, L. C. J., Mathew, Grantham, Lawrance and Collins, JJ.) unanimously confirmed the conviction. "There are," said

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Ss. 1, 2.

Coleridge, L. C. J., "a number of persons who join themselves together, not for any criminal purpose, but their joining together is not legalised. It is true that they have no legal existence as a company, association, or co-partnership, but they are none the less beneficial owners of property. In the indictment, the property was properly laid in the prisoner, W. Jackson, and others, as beneficial owners. It does not follow that because the club had no legal existence as a company, association or co-partnership, the members had no legal existence as beneficial owners of property. It is untrue to say that they are not beneficial owners in fact. It has been decided in *Reg.* v. *Stainer*, before trade unions were legalised, that where the property was laid in an association in the nature of a trade union, it did not follow that a person could not be convicted of stealing or embezzling their property because the association did not in all respects conform to the law, and the grounds of that decision apply here. It seems to me that the case for the prisoner is gone the moment his counsel is obliged to admit that if his contention be good, the property belonged to nobody and could, so to speak, be scrambled for. It would be a very strong thing to hold that an association not expressly sanctioned by law, yet not criminal, is incapable of holding any property at all."

"Co-partnership."

In *Reg.* v. *Robson*, in 1885 (15 Cox, 772), the meaning of "co-partnership" in this section was discussed. The Court for Crown Cases Reserved (Coleridge, L. C. J., Denman, Field, Hawkins and Wills, JJ.) was unanimously of opinion that the term, in modern usage, is confined to societies formed for gain, and the conviction of the prisoner, a member of a Young Men's Christian Association, for embezzling their money, on an indictment under this section as "a member of a co-partnership," was quashed. It seems that if he had been indicted as one of several joint beneficial owners, it could have been sustained.

Provisions of 18 & 19 Vict. c. 126, extended to embezzlement by clerks or servants.

2. All the provisions of the Act passed in the session of Parliament held in the eighteenth and nineteenth years of Her present Majesty's reign,

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intituled *An Act for diminishing Expense and Delay in the administration of Criminal Justice in certain Cases*, shall extend and be applicable to the offence of embezzlement by clerks or servants, or persons employed for the purpose or in the capacity of clerks or servants, and the said Act shall henceforth be read as if the said offence of embezzlement had been included therein. Ss. 2, 3.

Most of this Act is repealed, in so far as it relates to England, by 42-3 V. 49. It still applies to Ireland.

3. This Act shall not extend to Scotland. Extent of Act.

THE TRADES UNIONS FUNDS PROTECTION ACT, 1869.

32-3 V. 61.

This Act* expired in 1871; it is therefore not worth while to set it out. For the circumstances in which it was passed, see the Annual Register for 1869, p. 176.]

* "It is presumed that even before this statute a trades union might have maintained an action against an officer who had misappropriated their funds, for money had and received to their use (cf. *Tenant* v. *Elliott*, 1 B. & P. 3)." Jolly, Contracts in Restraint of Trade, p. 50. This is an interesting speculation. Criminal proceedings had failed in *Hornby* v. *Close* and *Farrer* v. *Close*. See p. 48 and p. 51.

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THE CRIMINAL LAW AMENDMENT ACT, 1871.

34-5 V. 32.

As to the origin of this statute, cf. p. 28.

This Act "was repealed by 38 & 39 Vict. c. 86, s. 17 (see p. 164), in consequence of the decision in *R.* v. *Bunn*, (12 Cox, 316) in 1872, that improper combination to control a master was still a common law offence" (Archbold's Criminal Pleadings, 22nd ed., p. 1102). Part of the headnote to that case runs: "An indictment for conspiracy at common law will lie against two or more persons for conspiring to commit an offence for which special provision is made by statute. The defendants, servants of a gas company under contract of service, being offended by the dismissal of a fellow-servant, agreed together to quit the service of their employers without notice and in breach of their contracts of service, by reason of which the company were seriously impeded in the conduct of their business. . . . Held, that the provisions of the statute [34-5 V. 32] had not affected the common law of conspiracy, for which an indictment would lie."

The prisoners were found guilty of conspiracy "to do a lawful act by unlawful means." They were acquitted of conspiracy to do an unlawful act.

Reg. v. *Bunn* was overruled by *Gibson* v. *Lawson*. See p. 131. According to Sir J. F. Stephen (3 History of the Criminal Law, c. 30), the decision in the *Gas Stokers'* case* "caused a real dissatisfaction amongst those who were principally affected by it," and led not only to the repeal of this statute but to the enactment of 38-9 V. 86. See p. 123.

* According to the same writer this was the last occasion on which the course was taken of asserting a power "inherent in the Judges" of declaring acts to be offences at common law which were never so declared before, *i.e.*, by "the treatment of conspiracies in restraint of trade as a common law misdemeanour." The history of this matter "is by no means favourable to the declaration by the bench of new offences" (*Ibid.* c. 34).

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THE FALSIFICATION OF ACCOUNTS ACT, 1875.*

38-9 V. 24.

An Act to amend the Law with reference to the Falsification of Accounts. [29 June, 1875.

Punishment for falsification of accounts, &c.

1. If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

"Or to be imprisoned . . . 2 years."

Repealed 56-7 V. 54 (S. L. R. (No. 2) Act, 1893).

* See Introduction, p. 9. The Act is inserted here because it might protect *unregistered* Trade Unions.

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Ss. 2, 3, 4.

Intention to defraud sufficient indictment.

2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded.

Act to be read with 24 & 25 Vict. c. 96.

3. This Act shall be read as one with the Act of the twenty-fourth and twenty-fifth of Her Majesty, chapter ninety-six.

I.e., The Larceny Act, 1861.

Short title.

4. This Act may be cited as the Falsification of Accounts Act, 1875.

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THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.

38-9 V. 86.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. [13th August, 1875.

Short title

1. This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

Commencement of Act.

2. This Act shall come into operation on the first day of September one thousand eight hundred and seventy-five.

Repealed by 56-7 V. 54, a Statute Law Revision Act.

Conspiracy, and Protection of Property:

Amendment of law as to conspiracy in trade disputes.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

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Ss. 3, 4.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

"The 3rd section of [this] Act distinctly legalises strikes in the broadest terms, subject to the exceptions enumerated in the 4th and 5th sections, which immediately follow, and are almost in the nature of provisoes upon the 3rd" (*per* Coleridge, L. C. J., *Gibson* v. *Lawson* (1891, 2 Q. B. at 558). See p. 132.

Breach of contract by persons employed in supply of gas or water.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying

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any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as

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Ss. 4, 5, 6.

aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

Breach of contract involving injury to persons or property.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Miscellaneous.

Penalty for neglect by master to provide food, clothing, &c. for servant or apprentice.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the

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servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Ss. 6, 7.

Penalty for intimidation or annoyance by violence or otherwise.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates such other person or his wife or children, or injures his property; or,
2. Persistently follows such other person about from place to place; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after

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S. 7. mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

"With a View." "'View' does not import motive. It imports purpose" (*per* Chitty, L. J., in *Lyons and Sons* v. *Wilkins*). See p. 139.

"Any act." In 1892 the justices of Sunderland, on the information of a district superintendent of the Shipping Federation, Limited, convicted an officer of the National Amalgamated Seamen's and Firemen's Union, which was at variance with the former body. He was summoned for that he "unlawfully, with a view to compel the informant to abstain from doing or to do acts which the informant had a legal right to do or abstain from doing, wrongfully and without legal authority persistently followed the informant about from place to place, and followed the informant with two or more other persons, in a disorderly manner, in or through High Street," &c. The defendant elected to be dealt with summarily, and the conviction stated that he, "with a view to compel one L. to abstain from doing acts which he the said L. had a legal right to do," unlawfully followed, &c. A rule *nisi* was obtained calling on the Justices to show cause why a writ of certiorari should not issue to bring up and quash the conviction; one ground was that the summons and conviction ought to have specified the acts therein referred to.

The justices stated in their affidavit that they found that

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the defendant's object was "to compel him to abstain from following his occupation as the agent of the Shipping Federation, an act which he had a legal right to do." The Queen's Bench Division quashed the conviction on the ground mentioned.

"The conviction," said Collins, J., "does not altogether follow the wording of the summons. . . . When the section constituting the offence is looked at, it is obvious that the defect is one of substance and not one merely of form. . . . The Legislature might, had it chosen to do so, have constituted the mere following a person in a disorderly manner an offence. It has not so chosen, and it is clear that the gist and pith of the offence here is not the following in a disorderly manner, but the doing so with a view to compel the informant to abstain from doing some act which he had a legal right to do. If the defendant could have shown that he had had no such view, or that the informant had had no legal right to do the act which the defendant had desired to compel him to abstain from doing, that would have been a good answer to the charge. The conviction, therefore, does not address itself to the real pith of the offence, and it does not seem to me to comply with either the terms or substance of the statute.

"But then it is said that it might nevertheless be cured by amendment. I think that that might be so if it was clearly shown to us that the offence constituted by the Act was in fact proved before the magistrates. It is a good test to see what the magistrates had actually before them. As it seems to me, the laxity which is expressed in the conviction is also apparent in the mode in which they dealt with the offence charged. The affidavit of the justices says that it was proved that the defendant had followed the informant in a disorderly manner and with two or more persons 'with a view to compel him to abstain from following his occupation as the agent of the Shipping Federation, an act which he had a legal right to do.' They appear to have treated that as one act. Obviously, the following of an occupation

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S. 7. must consist of a large number of acts, and I think, unless the prosecution could specify some particular act which the defendant desired to compel the informant to abstain from doing, it is impossible to say that he was properly convicted of an offence under the section. It seems, therefore, to me, that any amendment of the conviction is out of the question here, as the facts proved at the hearing do not point to any such specific act" (*Reg.* v. *McKenzie*, 1892, 2 Q. B. 519).

Bruce, J., in concurring, said: "It was formerly necessary in order to render a conviction good to set out in it all the facts constituting the offence in order that the offence itself might appear in the conviction. But by sect. 39 (1) of the Summary Jurisdiction Act, 1879, it is provided that the description of any offence in the words of the Act creating the offence shall be sufficient in law. I am inclined to think, therefore, that, if this conviction had followed the words of the Act, even although it did not specify the particular act which the informant was intended to be prevented from doing, it would be sufficient. But the conviction here speaks of acts and not of 'an act,' and therefore it does not follow the words of the section. That seems to be a sufficient variance and a variance in substance, and it is plain that the magistrates had not any particular act present to their minds."

But "a commitment under this section for 'following in a disorderly manner with a view to compel one A. B. to abstain from working as a shoe-finisher in the employment of one C. D., a shoe manufacturer, carrying on business in the parish of E.,' is a good one, inasmuch as it contains a sufficient description of a specified act from which the complainant was compelled to abstain" (*per* Cave and Lawrance, JJ., *Ex parte Wilkins*, 64 L. J. M. C. 221; 18 Cox, 161, in 1895). "In the case of *Reg.* v. *McKenzie*," said the former, "I share the doubt expressed by Mr. Justice Bruce whether, if the commitment there had followed the words of the statute, it would not have been good without further specification of any particular act. The point of that case, and the only point, was that the commitment did

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not fully follow the form of the statute. . . . But here the conviction is a perfectly good one in form and substance. . . . The object of the following, as alleged, was to prevent the complainant from working at his employment as specified. That is the very offence pointed at in the section."

As to the form of indictment under this s., see *Reg.* v. *Edmondes* (59 J. P. 776), in 1895.

(1) "**Intimidates.**" The meaning of this word was considered, in 1891, in two cases ordered to be argued, on appeal, before a specially constituted court, which consisted of Coleridge, L. C. J., Mathew, Cave, A. L. Smith, and Charles, JJ.

In *Gibson* v. *Lawson* (1891, 2 Q. B. 547) the Lord Chief Justice delivered the judgment of the Court, whence the facts sufficiently appear: "The magistrates having dismissed the charge, the appeal is against the dismissal of the summons—a course, no doubt, open to the appellant under 42-3 V. 49, 33. This summons was under 38-9 V. 86, 7, and charged in substance that the respondent unlawfully intimidated the appellant.

"The respondent was employed as a fitter in the yard of an iron shipbuilding company; the appellant was employed in the same capacity in the same yard. The respondent was a member of a society called the Amalgamated Society, and the appellant was a member of a society called the National Society. On December 3rd, 1890, a meeting of the Amalgamated Society was held, at which it was resolved that the members of that society would strike unless the appellant left his society and joined theirs. The respondent communicated this resolution to the foreman of the shipbuilding company, who communicated it to the appellant. Thereupon the appellant had an interview with the respondent. In the result the respondent informed the appellant that the Amalgamated Society were determined to carry their resolution into effect, but gave him till the morning of Saturday, December 6th, to make up his mind. The appellant adhered to his own society, and the shipbuilding company, in order

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S. 7. to avoid a strike, dismissed him from their yard. It is expressly found in the case that no violence or threats of violence to person or property were used to the appellant; but he swore that he 'was afraid, because of what the respondent had said, that he would lose his work, and would not get employment anywhere where the Amalgamated Society predominated numerically over his own society.' These are the whole of the material facts, and on these facts the magistrates dismissed the summons and, we think, rightly.

"The 3rd sect. of [this] Act distinctly legalises strikes in the broadest terms, subject to the exceptions enumerated in the 4th and 5th sects., which immediately follow, and are almost in the nature of provisoes upon the third. . . . The Act 34-5 V. 32 was passed in 1871, after, therefore, the charge to the jury by the present Lord Bramwell in *Reg.* v. *Druitt** (10 Cox, C. C. 592), which was in 1867. Whether the Act was produced by the charge, it is profitless to inquire. The last proviso of the 1st section is plainly inconsistent with the charge and still more inconsistent with the language of Crompton and Hill, JJ., who, in *Hilton* v. *Eckersley* (6 E. & B. 47; 24 L. J. Q. B. 353), and *Walsby* v. *Anley* (30 L. J. M. C. 121), had, the one declared, and the other suggested that strikes were *per se* criminal at common law. . . . The statute 34-5 V. 32 is not, indeed, conceived in any weak spirit of tenderness to workmen, but the 2nd sub-s. of sect. 1 limits 'intimidation' in that sub-section to such intimidation as would justify a magistrate in

* According to the headnote of that case: "The defendants were members of a trade union of the tailors. The workmen having, at the instigation of the union, struck for wages, and the masters having employed workpeople, men and women, not being members of the union, the defendants, who were members of the managing committee of the union, caused 'pickets' to be stationed about the doors of such employers to note workpeople who went in and out, for the purpose of deterring them from continuing in such employ, and inducing them to join the union. Proof was given of the use of insulting expressions and gestures used by 'the pickets' to the non-union workpeople. Held, to be 'intimidation,' 'molestation,' and 'obstruction' within the meaning of 6 G. IV. 129, 3, and 22 V. 34, 1."

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binding over the intimidator to keep the peace towards the person intimidated, in other words, to such intimidation as implies a threat of personal violence.* Of such intimidation there is in this case no evidence whatever; but it is truly said that this statute is repealed, and is of importance only so far as its object and language may throw light upon the existing statute. . . . It seems clear, however, that, looking at the course of legislation, and keeping in mind the changing temper of the times on this subject, the word 'intimidate' in the 7th sect. of the later Act cannot reasonably be construed in a wider and severer sense than the same word in the 2nd sub-s. of sect. 1 of the earlier Act. 'Intimidate' is not, as has been often said by judges of authority, a term of art—it is a word of common speech and every-day use; and it must receive, therefore, a reasonable and sensible interpretation according to the circumstances of the cases as they arise from time to time. We do not propose to attempt an exhaustive definition of the word, nor a complete enumeration of the cases to which it may be properly, nor of those to which it may be improperly, applied. It is enough for us to say that in this case it appears to us that there was nothing which, under any reasonable construction of the word 'intimidate,' could be brought within it. Whether the action of the Amalgamated Society was morally right or not is a matter on which we express no opinion, because it is not the question before us. It seems to us that it was not illegal within the words of the Act of Parliament under which the summons was issued.

"This, however, does not entirely dispose of the question, for we were very properly reminded of the cases of *Reg.* v. *Druitt* and *Reg.* v. *Bunn* [see p. 120], in which Lord Bramwell and Lord Esher . . . are both said to have held that the statutes on the subject have in no way interfered with or altered the common law, and that strikes and combinations

* "Whether that was rather a narrow view to take of the clause or not I do not pause to inquire." Lindley, L. J., in *Lyons* v. *Wilkins*. See p. 139.

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S. 7. expressly legalised by statute may yet be treated as indictable conspiracies at common law, and may be punished by imprisonment with hard labour. Neither of these cases is very satisfactorily reported; in neither was there any motive for questioning the *dicta* of the Judges. In the one tried by Lord Esher there was no opportunity, in consequence of the prisoner having been acquitted on all the counts to which the alleged ruling applied. [See p. 120.]

"We are well aware of the great authority of the judges by whom the above cases were decided, but we are unable to concur in these *dicta*, and, speaking with all deference, we think they are not law. It seems to us that to hold that the very same acts which are expressly legalised by statute remain nevertheless crimes punishable by the common law is contrary to good sense and elementary principle, and that the reports, therefore, cannot be correct. If the *dicta* are law, they render the statutes passed on these subjects practically inoperative, and these statutes might as well not have been passed. The *dicta* are criticised in detail and with great ability in Mr. Justice Wright's excellent work [1873] on the Law of Criminal Conspiracies and Agreements, pp. 50-59. It is difficult to withhold assent from the statements and reasonings contained in those pages, and it seems to us that the law concerning combinations in reference to trade disputes is contained in 38-9 V. 86, and in the statutes referred to in it, and that acts which are not indictable under that statute are not now, if indeed they ever were, indictable at common law."

In the other case, *Curran* v. *Treleaven* (*Ibid.*), the facts also sufficiently appear from the following excerpts from the judgment of Coleridge, L. C. J.: "In order to prevent the employment by Mr. Treleaven of non-union men, the three secretaries told him that if he did not cease to employ non-union men they, the secretaries, would call off from their employment by him all the members of their respective unions. Mr. Treleaven refused compliance with their demands, and thereupon the secretaries called off their

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respective union men, who, in obedience to the call, struck work. The facts are stated to us as follows by the learned Recorder: . . . 'On October 14th, there was a meeting of the unions, at which it was resolved to adopt the course which the defendants had stated at their interview would be adopted, and accordingly, on the 15th, the defendants, in the presence of Mr. Treleaven, whom they had asked to attend, made the following statement to Mr. Treleaven's workmen and others who were assembled at the wharf: "Inasmuch as Mr. Treleaven still insists on employing non-union men, we, your officials, call upon all union men to leave their work. Use no violence, use no immoderate language, but quietly cease to work and go home." The orders thus given were obeyed, and the union men who were unloading Mr. Treleaven's ships immediately ceased unloading them, although they had not completed the work that they were under contract to perform." He has also found, . . . or rather he has expressed his opinion upon the two following facts or points in these words . . . with reference to the particular question of intimidation: 'That the defendants did not desire or intend that any violence should be used or injury done to Mr. Treleaven or his property; that it was not proved that their words or acts were calculated directly to cause any such violence or injury, although I am of opinion that Mr. Treleaven was not unreasonably afraid that such violence or injury might occur from the action of the members of the unions, in consequence of the strike, but against the wishes and intentions of the defendants; that the defendants had no illwill against Mr. Treleaven personally, but acted with the object of obliging all the labourers to join the union as a means of getting employment, and of obtaining for the members of the unions a monopoly of the labour of the port.' He held . . . that the facts above stated constituted intimidation within the words of the section, and that the appellants were properly convicted by the magistrates of intimidating. We are unable to agree with him. . . . We say that, to tell an employer

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S. 7. that if he employs workmen of a certain sort, the workmen of another sort in his employ will be told to leave him, and to tell the men, when the employer will not give way, 'to leave their work, use no violence,' &c., is certainly not intimidation within any reasonable construction of the statute.

"Two further observations are necessary in order to make our judgment complete and effective. We do not think that the legislature intended by the change of words in the 1st sub-s. of sect. 7 of 38-9 V. 86, to send the Courts back to 6 G. IV. 129 for an interpretation of the word 'intimidate,' although the later statute did repeal 34-5 V. 32, which limited intimidation to cases which would justify a magistrate in binding over the party to keep the peace. There is, indeed, much to be said for the view entertained by my learned brother Cave and acted upon by him . . . in a case tried before him at Liverpool (*Reg.* v. *McKeevit*, Liverpool Assizes, December 16th, 1890, unreported), namely, that intimidation in 38-9 V. 86, must still be limited to threats of personal violence, as enacted by 34-5 V. 32. It may become necessary to decide this point in time to come; it is not now; and we confine ourselves to the negative statement that 6 G. IV. 129, is not now on this subject the governing statute."

6 G. IV. 129 was repealed in 1871 by 34-5 V. 32, 7. For this latter Act see p. 120.

A threat to do any of the acts prohibited by sub-ss. (2), (3), (4) or (5) (see p. 137) may be "intimidation" under sub-s. (1).

In *Judge* v. *Bennett* in 1887 (52 J. P. 247; 36 W. R. 103), the facts found were as follows; There had been a strike among the riveters in Mrs. Bennett's employ, whereupon Judge, the secretary of a riveters' union, wrote to her: "I have to inform you that the riveters in your employ have determined not to again start work unless you are willing to start the whole of them. Should you refuse to start them all, the finishers will also be stopped, and your shop picketed until such time that you comply with the conditions above stated. . . . If you are agreeable to take back all your

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hands the matter is settled. If not, then we shall fight it out to the end." She "refused to take back the men; the shop was ordered by the union to be picketed. Two men paraded in turns before the front of the shop for three days. It was admitted that the picketers behaved in an orderly manner, and did not personally interfere with the work-people going in and out of the respondent's shop, but a crowd of four to five hundred people assembled in the roadway outside the shop, and the police were called upon by the respondent to protect her shop from, as she alleged, a well-grounded fear on her part of personal violence." A magistrate convicted Judge and a Divisional Court (Stephen and A. L. Smith, JJ.) upheld the conviction. "Intimidation," said the former, "is to use violence so as to make a person afraid. It is not brought about by actual threats of violence to a person or his property, but by attempting by any means to make that person afraid,—in this particular instance, of doing or not doing that which such person has a legal right to do or to refuse to do. If a man expresses his intention to picket in such terms as to make the person addressed afraid, that is sufficient to bring his action within the meaning of intimidation.* I can imagine that such intention to picket might be conveyed in such terms as to show that there was no intention to do anything within the terms of this Act. Here this determination was conveyed in such a way as to cause fear." "Intimidation," said A. L. Smith, J., "is not merely to use violence or to threaten to use violence. Sub-s. 1 of sect. 7 shows this. What is the meaning of 'intimidates'? Why, the using of language which causes another man to fear."

This case, said Mathew, J. (during the argument in *Gibson* v. *Lawson*), "would seem merely to have decided that a threat to do something specifically prohibited by the statute, if it in fact intimidates, is intimidation."

* "I am of opinion that the word intimidation may mean any kind of threat, provided it made the person against whom it was used reasonably afraid." (52 J. P. 248.)

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Thus, comparing the last two cases, it would seem that Mrs. Bennett had reasonable ground for fear, and Mr. Treleaven had not. Note that in Judge's case the threat was that someone else and not *he* would picket.

(2) "**Persistently follows.**"

In *Smith* v. *Thomasson* in 1890 (54 J. P. 596), the headnote is: "S. being one of the workmen on strike, acted as picket, and watched those who were employed as they came out of the works. On T., a workman, coming out, the crowd shouted names and threw refuse, and S. followed T. close behind through several streets, but never spoke to T." Justices convicted S. under this sub-s., and a Divisional Court (Pollock, B. and Hawkins, J.) held that they were right. "The legislature did not, in describing that offence [persistently following] mean that there must be a number of persons joining in the act of following. What was intended was to prevent the act of following persistently, whatever the intention may have been. It must be for the justices to say in any given case whether the conduct of the defendant was in the nature of intimidation. If in this case the appellant had been alone, even his silence in following might have been something against him, but when it is shown that a crowd of three hundred persons followed the respondent, &c. . . . surely this is some evidence that he was doing something of the same kind. He may have had opportunities of speaking to the respondent, and did not avail himself of the opportunity; but as far as intention can be inferred, we may look at what the people were doing at the same time. All the circumstances tend to show the general object." *Per* Pollock, B. "It is no doubt," said Hawkins, J., "difficult to define what the statute meant by persistent following. . . . It is true the appellant did not speak to the respondent, but still his conduct, taken along with the conduct of the crowd, supplied abundant evidence that he was persisently following from place to place contrary to the statute."

(4) "**Watches or Besets.**" In *Reg.* v. *Bauld* (13 Cox,

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282), in 1876, where the defendants were indicted for having conspired, by means of watching and besetting, to compel certain workmen to quit their employment, their counsel argued that if the watching and besetting "were merely done for the purpose of persuading the men to quit their employment it would not be illegal," but Huddleston, B., would not assent to that view of the law. "The statute," he said, "allows watching or attending near a place for the purpose of obtaining or communicating information, but this is the only exception."

In *J. Lyons and Sons* v. *Wilkins* (65 L. J. Ch. 601; (1896) 1 Ch. 811; 74 L. T. 358; 45 W. R. 19; 60 J. P. 325), Kay, L. J., said, "The question involved is one of the highest possible importance, because by this case the long struggle which has been going on between trade unions and employers and workmen is brought exactly to a point."

There the facts were—the executive committee of a trade union desired the plaintiffs to raise the wages of their workpeople and to alter their system from part piece-work and part time-work to one wholly one or the other. In the end a strike was ordered. Several of the workpeople gave notice to end their engagements, and ceased work, and the plaintiffs' works were picketed by persons employed by the executive committee. Each picket had a card, headed with the union's name, and running: "Dear Sir. You are hereby requested to abstain from taking work from [plaintiffs] pending a dispute. Members are also requested to use their influence to keep non-society men, stitchers and machinists, &c., from applying for work until the dispute is settled." "The pickets accosted persons entering and leaving the plaintiffs' premises, tried to persuade them not to work for the plaintiffs, and gave them some of the cards. On one occasion they opened a bag carried by an errand-boy who was taking goods to the plaintiffs, and on one or two occasions followed persons into the plaintiffs' works. . . . The executive committee endeavoured to get one Schoenthal, who was a sub-manufacturer for the plaintiffs, to cease to do work for

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S. 7. the plaintiffs, and on failing to do so they ordered a strike of, and picketed his works."

North, J., granted an interlocutory injunction against the defendants, members of the executive committee. He held that there was "strong evidence of malice," though he thought it would be too strong to say that there was "intimidation or terrorism. But the pickets do seem to have carried it rather far." He refused that relief in respect of the inducing the breaking of contracts and the libel alleged. On a point of procedure, the learned Judge said: "I was told that it was inconvenient to try the question of malice on an interlocutory motion, or afterwards on a motion to commit, and Mr. Jenkins referred to the observation of Lord Esher in *Flood* v. *Jackson* (1895, 2 Q. B. 88), where he said the only recognised tribunal that could decide whether an act is or is not malicious is a jury. I do not understand that to mean that in no case of malice can an interlocutory injunction be granted. It would have been quite unnecessary to make any such statement in a case of that sort; and I take it that it may at times be right to interfere by interlocutory injunction, although the question of malice is involved. It is far better that a question of that sort should be tried where it can be by a jury, and not otherwise; but if the question is whether an act admittedly malicious is to be dealt with on interlocutory application or tried at the hearing, it cannot possibly be for the benefit of the public that an admitted wrong should be continued without being stopped.... There is this to be borne in mind also, that in most of these cases . . . in which trade unions are concerned the persons who are defendants are such that a decision that there can be no remedy but damages would be equivalent to a decision that there cannot be any remedy at all."

Upon appeal, the Court (Lindley, Kay, and A. L. Smith, L. JJ.) unanimously affirmed the decision of Mr. Justice North.

On the question of procedure, the former spoke of "the second point, which is that we ought to leave these people

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to the summary jurisdiction of a magistrate. I do not think so. This is obviously a case in which a man's property, his trade, his livelihood, and the goodwill of his business will be absolutely ruined if what is complained of is not peremptorily stopped; and according to the well-known principles by which the Court of Chancery has been guided, it is a case in which a person's property and trade are so interfered with that he may come to the Court for the protection which an injunction affords him." S. 7.

In the course of the same judgment Lindley, L. J., said: "One cannot say as an abstract proposition that all picketing is unlawful, because if all that is done is attending at or near a house in order merely to obtain or communicate information, that is lawful. But it is easy to see how under colour of so attending, a great deal may be done which is absolutely illegal. . . . It is because this proviso is often abused and used for an illegal purpose that such disputes as these very often arise."

All the judgments are to the same effect. Some of Lord Justice Kay's remarks are, perhaps, the most emphatic. "Since the Judicature Act, at any rate, there can be no doubt whatever of the jurisdiction of the Court to grant an interlocutory injunction like this which has been granted by North, J. . . . Now, the defendants are the officers of a trade union, and it seems to me to be very unlikely that any possible damage can result to them from the granting of this injunction; whereas, on the other hand, if it is not granted very grave damage indeed may result to the plaintiffs. A *primâ facie* case of illegality is made out, and upon the balance of convenience and inconvenience an *interim* injunction ought to be granted. . . .

Also, I take it that under the terms of section 3, it is not illegal for a trade union to promote [a] strike. But further than that the law has not gone.

I hold distinctly that it is illegal to picket the works or place of business of a man by persons who are distributed and placed there for the purpose of trying by persuasion to induce the workmen of that man not to work for him any

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S. 7. longer, or to induce people who want to work for him to abstain from entering into an agreement with him to do so.

Mr. Jenkins argued very ingeniously that the expression 'with a view to compel any other person' only means to compel any other workmen. I entirely disagree with him. I think that it means to compel either the employer or the workmen. To compel the employer by inducing the men not to work for him seems to me to be precisely within the language of this section. . . . If that [watching or besetting] is done by means of persuasion of the workmen, then, although no compulsion is put on the workmen themselves, but the compulsion is by that means put upon the employer, that, nevertheless, seems to me to be distinctly within this section of the Act; and this is, I think, more clearly shown by the proviso at the end of this section. . . . Now, let me take Schoenthal's case. In that case they are not merely persuading Schoenthal not to work, but they are trying to prevent his working. They have no right to prevent anybody working; they have no right to prevent one of his workmen working for him. If they use means to prevent his working, that is not encouraging a strike, but it is doing something far more. If by any means they prevent Schoenthal working for Messrs. Lyons, that is an illegal act. They have conspired together and combined to take means to prevent somebody from working for Messrs. Lyons, who otherwise would do so. No Act of Parliament justifies that. It would have been illegal before this Act. There is nothing in this Act which justifies it, and it is illegal still." *

* The learned Lord Justice suggested the form of the injunction adopted by the Court and likely to become common in cases of picketing—viz., "an injunction to restrain the defendants, their servants or agents, from watching or besetting the plaintiffs' works for the purpose of persuading or otherwise preventing persons from working for or for any purpose except merely to obtain or communicate information." Note that the C. A., *proprio motu*, extended its protection to Schoenthal (not a party to the suit)—for North, J., does not seem to have dealt with the point—by adding to the words of the injunction just cited, the following: "and also from preventing Schoenthal or other persons from working for the plaintiffs, by withdrawing his or their workmen from their employment respectively."

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"If," said A. L. Smith, L. J., "there had been a trade dispute between Mr. Schoenthal's workmen and himself, I apprehend that the trade union might have done as regards Mr. Schoenthal exactly that which they did as regards Messrs. Lyons, and they might have called his men out. . . . There was no dispute between Mr. Schoenthal and his men. What the union did was not done in furtherance of a trade dispute between him and his men. . . . That strike of the trade union against Schoenthal was . . . illegal." S. 7.

The action came on for trial in November, 1897 (1899, 1 Ch. 255), some time after the strike had come to an end. The trustees of the union had meanwhile been added as defendants. Byrne, J., having postponed his judgment until the decision of *Allen* v. *Flood* (see p. 155), early in 1898 made the injunction referring to the plaintiffs' works perpetual, and gave damages in respect of the libels. He also granted a perpetual injunction against "watching or besetting the premises of Adolph Schoenthal for the purpose of persuading or otherwise preventing him from working for the plaintiffs, or for any purpose except merely to obtain or communicate information," remarking as to this, "I think it probable that the C. A. would have framed the second part of the injunction granted in a different manner had the case of *Allen* v. *Flood* then been decided by the House of Lords. [See p. 158.] At any rate, the point has not been specifically argued whether or not, apart from the question of malice, it was unlawful to call out the workmen of Schoenthal in order to prevent him from working for the plaintiffs."

At the same time the learned Judge refused an injunction against maliciously inducing or conspiring to induce persons not to enter into contracts with the plaintiffs; holding that he was precluded by *Allen* v. *Flood*, saying, "It was conceded by the plaintiffs that they could not succeed unless they could show malice, and it is the law, as finally determined by the House of Lords, that the existence of a malicious motive cannot in such a case as this render unlawful an

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s. 7. act or acts otherwise lawful." He also refused an injunction asked for against the trustees applying the funds in furtherance of the wrongful acts, being of opinion "that there is no legal ground to justify such an injunction," and disallowed the plaintiffs' costs in this respect. The defendants were allowed the costs of their motion to strike out the name of the *Society* as defendants. On this point, see p. 82. The defendants appealed, but the C. A. (Lindley, M. R., Chitty, and Vaughan Williams, L. JJ.), after considering its judgment, dismissed the appeal. The Master of the Rolls remarked that the construction put upon 38-9 V. 86, 3, 7, by that Court (see p. 140) was, in his opinion, correct, and he confined himself to "one or two important questions" now raised for the first time. In dealing with an argument (not necessary to reproduce here) on the words "wrongfully and without legal authority," he remarked, "It is not necessary to show the illegality of the overt acts complained of by other evidence than that which proves the acts themselves, if no justification or excuse for them is reasonably consistent with the facts proved. . . . If the overt acts mentioned in sub-head 1, for example,—*i.e.*, using violence or intimidation, are proved, and it is proved that they were done with a view to compel, &c., and there is no reasonable ground for justifying them, it is unnecessary to give further evidence to prove that they were committed 'wrongfully and without legal authority.' See *Reg.* v. *McKenzie* [p. 128].

"The truth is that to watch or beset a man's house with a view to compel him to do or not to do what is lawful for him not to do or to do is wrongful, and without lawful authority, unless some reasonable justification for it is consistent with the evidence. Such conduct seriously interferes with the ordinary comfort of human existence and ordinary enjoyment of the house beset, and such conduct would support an action on the case for a nuisance at common law. See *Bamford* v. *Turnley* (3 B. & S. 62), *Broder* v. *Saillard* (2 Ch. D. 692, 701), *per* Jessel, M. R., *Walker* v. *Selfe* (4 De G. & Sm. 315), and *Crump* v. *Lambert* (L. R. 3 Eq.

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409). Proof that the nuisance was 'peaceably to persuade other people' would afford no defence to such an action. Persons may be peaceably persuaded provided the method employed to persuade is not a nuisance to other people." Cf. the judgment of Chitty, L. J., at p. 271.

Vaughan Williams, L. J., dissented to some extent from the rest of the Court as to the meaning of these words, though he held that he was bound by the previous judgment of that Court in the case. See p. 140. Apparently he thought that the construction put by his colleagues on these words "would shift the onus from the prosecution to the defence," and he remarked, "At the common law watching and besetting, apart from the law of conspiracy, might or might not be so conducted as to amount to a nuisance." Another important difference of opinion is contained in the words: "I think that the fact that the communication invites the men to discontinue working for the master as soon as they lawfully may, does not thereby cause the communication to cease to be a communication within the meaning of the proviso" (*i.e.*, the last paragraph of this section). On the other hand, the same learned judge points out "the persuading" must not take any other shape than that of a communication, even though in itself it was not a nuisance at common law. And even when it did take that form, yet "it may be made in such a manner" as to be a common law nuisance. In the present case, he thought, the persuasion did not amount to a common law nuisance.

"**Such other person**" in sub-s. 4.

"It is said," the Master of the Rolls went on (*Ibid.*), "that to beset one person's house with a view to compel some one else is not within the section. Such a construction would render the Act nugatory in a great number of cases clearly within the mischief intended to be remedied. . . . 'Such other' means 'any other.'"

The Court was unanimous that this case was not affected by *Allen* v. *Flood*.

"Nor is *Allen* v. *Flood* of any real use in construing the

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S. 7. statute with which we have to deal." *Per* Lindley, M. R. "In my opinion . . . the appellants have failed to show that the decision of the Court on the motion [see p. 140] is in any way overruled by *Allen* v. *Flood* or by any principle laid down in that case." *Per* Chitty, L. J. "I agree that the case of *Allen* v. *Flood* in the House of Lords has no application to the case before us." *Per* Vaughan Williams, L. J.

In *Charnock* v. *Court* (1899, 2 Ch. 35; 80 L. J. N. S. 564), the facts were: "During the pendency of a strike, two agents of a trade union attended at a landing-stage to await the arrival of a steamer containing workmen imported by the masters from Ireland to replace the men on strike, and on the arrival of the steamer they informed the Irish workmen of the strike, and offered to pay their expenses if they would go elsewhere to work." Stirling, J., following *Lyons* v. *Wilkins* (see p. 139), held that "the attendance at the landing-stage was with a view to compel the masters to conduct their business in accordance with the requirements of the men, and was not in order merely to communicate information." "The next question is," he went on, "whether the case is within sub-sect. 4. . . . It was known or suspected that the workmen would arrive at Fleetwood by steamer on February 22nd." The two agents "go there and await the arrival of the steamer, and then enter into communication with the men who land. It seems to me that that is watching a place where the workmen happened to be. There is nothing in the statute which defines the duration of the watching. It may be, it seems to me, for a short time. . . . The word 'attending' does not necessarily imply any lengthened attendance upon the spot, nor is there anything in the statute to limit its operation to a place habitually frequented by the workman, such as the house where he resides or the place where he works. On the contrary, the words 'place where he happens to be' seem to me to embrace any place where the workman is found, however casually."

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It may be noted that the writ in this action was amended so as to make all the members of the masters' union, which brought it, plaintiffs, apparently because the union was not registered. See p. 77. The defendants were officials and a member of the executive committee of a workmen's trade union. The learned Judge decided that the defendants were liable for the acts of the two agents, and granted an interlocutory injunction against the former, restraining them "or their agents or persons authorised by them from watching or besetting the landing-stage at Fleetwood or any other place to which any person or persons employed or about to be employed by the plaintiffs or any of them may be brought." Ultimately the defendants submitted to a perpetual injunction (*Ibid.* p. 703, *note*).

In *Walters* v. *Green* (1899, 2 Ch. 696), the facts were similar to those in *Charnock* v. *Court*, but a very important point of law was argued. The plaintiffs were master builders and members of the Master Builders' Association; the defendants were officials of various trade unions at Hull, and also of a federation, "a union of the unions." Upon the statement of claim (one paragraph of which gave particulars of alleged overt acts by particular defendants against (1) particular plaintiffs, (2) against all the plaintiffs, and by the defendants generally against particular plaintiffs) a preliminary objection was taken that the action was not properly constituted, on the ground that "there are here several plaintiffs and several defendants, and the acts alleged against the defendants are different in character. Each one is a distinct tort, and a separate cause of action by each of the plaintiffs against each defendant. There is no joint cause of action against all the defendants. The case does not fall within the provisions of Order XVI. [r. 1]." Stirling, J., held that the statement of claim alleged "that the defendants jointly committed a series of illegal acts, causing damage to the plaintiffs. Therefore, what is alleged is a joint cause of action." He also held that the plaintiffs could combine in bringing the action, citing the view of Order XVI. r. 1, taken in *Stroud* v. *Lawson* (1898,

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Ss. 7, 8, 9.

2 Q. B. 44, 52); the right to the relief as alleged arose out of the same series of transactions, and there was a common question of fact as well as of law, viz.: whether all these acts were done in pursuance of a combination so as to make the defendants jointly responsible. An injunction was granted against two (only) of the defendants, similar to that in *Charnock* v. *Court*, the learned Judge observing: "Trade unions are legal bodies and *primâ facie* their officers cannot be presumed to have authority to do or sanction anything" unlawful.

Reduction of penalties.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one fourth of the penalty imposed by such Act.

Legal Proceedings.

Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary

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conviction, and the offence may be prosecuted on indictment accordingly.

Ss. 9, 10, 11, 12.

Proceedings before court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

Regulations as to evidence.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

This subject is now regulated generally by the Criminal Evidence Act, 1898 (61-2 V. 36, 1 (c) and 4). Under this Act, a wife may be called as a witness for her husband but could not be a witness against him, and in this respect the Act of 1898 makes no difference.

Appeal to quarter sessions.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions

The rest of the section is repealed as to England by 47-8 V. 43, 4 (Summary Jurisdiction Act, 1884).

for the county or place in which the cause of appeal has arisen, holden not less than fifteen

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S. 12.

days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace, with or without sureties, conditioned personally to try such appeal and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

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Definitions. S. 13.

13. In this Act,—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same; and

General definitions: "The Summary Jurisdiction Act."

The expression "court of summary jurisdiction" means—

"Court of summary jurisdiction."

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that,

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Ss. 13, 14.

as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Definitions of "municipal authority" and "public company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

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Ss. 14, 15.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"**The Municipal Corporations Act, 1835.**" For this we must read "The Municipal Corporations Act, 1882," by sect. 242 (3) of that Act (45-6 V. 50).

"Maliciously" in this Act construed as in Malicious Injuries to Property Act.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

The word occurs in sects. 4, 5, 9.

Section 58 of 24-5 V. 97 (Malicious Injuries to Property Act) runs: Every punishment and forfeiture by this Act

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S. 15. imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

In this section "malice" is only considered from the point of view of criminal law. But it is convenient to deal here with the subject in its connection with civil actions, especially as the leading case in recent times (*Allen* v. *Flood*, 1898, App. C. 1) in which it was exhaustively discussed, arose out of the ordinary proceedings of a trade union. Only a brief account can here be given of the general legal aspects of the case, except in so far as they bear on the special law affecting trade unions, and the same remark applies to *Temperton* v. *Russell and Others* (1893, 1 Q. B. 715; 9 T. L. R. 393), which must be mentioned first.

The headnote to this case states: "The defendants were members and officers of certain trade unions connected with the building trade, and of a joint committee thereof. These unions adopted certain rules in relation to building operations. A firm of builders having refused to observe these rules, the unions, in order to compel them to do so endeavoured to prevent other persons from supplying them with materials. The plaintiff, who supplied materials to that firm, refused to comply with the request of the unions to cease doing so. The defendants, in order to compel the plaintiff to comply with that request by injuring him in his business, induced certain persons, who, as the defendants knew, had made contracts with the plaintiff, not to perform those contracts, and also induced those persons and others not to deal in the future with the plaintiff, by threatening to withdraw the union workmen who were employed by them. The plaintiff thereby suffered damage." The plaintiff brought an action for damages before Collins, J., and a special jury at Leeds. The learned Judge laid it down that "to induce a person who has made a contract with another

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to break that contract in order to injure the person with whom it has been made, to hamper him in his trade or to put undue pressure upon him, or to procure some indirect advantage for the person himself, to induce another to break a contract for any of these motives, is in point of law to do it maliciously." The jury were also directed "that a malicious conspiracy to prevent persons from entering into contracts with another was actionable if it caused damage." The jury found that the defendants maliciously induced certain persons to break their contracts with the plaintiff and maliciously conspired to induce those persons and others not to enter into contracts with the plaintiff, whereby those persons were induced not to make such contracts, and awarded damages. Collins, J., granted an injunction restraining the defendants from inducing persons to refuse to take goods from the plaintiff or from endeavouring to induce persons to break their contracts with the plaintiff. The defendants appealed upon the ground of misdirection and that there was no evidence of any actionable wrong. The Court of Appeal (Esher, M. R., Lopes and A. L. Smith, L. JJ.), held that there was no misdirection, and that there was an actionable wrong, the latter remarking: "It was argued that if the defendants were to be held liable in damages in this case, no trade union could hereafter call out their men, for might be held that by so doing they were inducing the breach of a contract to the injury of one of the contracting parties, if there happened to be one. I do not agree that a strike is analogous to the present case. . . . The present is a very different case to that suggested, viz.: the merely calling out men on strike; though it does appear to me that, if a strike were used for the purpose and with the intent above mentioned, an action would lie."

The importance of *Temperton* v. *Russell* (p. 154) and *Trollope's* case (p. 80) is much diminished since the final judgment in the leading case of *Allen* v. *Flood and Taylor* (1898, App. Cases, 1), which was an appeal from *Flood and Another* v. *Jackson, Allen, &c.* (1895, 2 Q. B. 21). "The

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S. 15. facts material to this appeal (omitting matters not now in question) were as follows: In April, 1894, about forty boiler-makers or 'iron-men' were employed by the Glengall Iron Company in repairing a ship at the company's Regent Dock in Millwall. They were members of the Boiler-makers' Society, a trade union, which objected to the employment of shipwrights on ironwork. On April 12th the respondents Flood and Taylor, who were shipwrights, were engaged by the company in repairing the woodwork of the same ship, but were not doing ironwork. The boiler-makers, on discovering that the respondents had shortly before been employed by another firm (Mills and Knight) on the Thames in doing ironwork on a ship, became much excited and began to talk of leaving their employment. One of them, Elliott, telegraphed for the appellant Allen, the London delegate of the Boiler-makers' Society. Allen came upon the 13th, and being told by Elliott that the iron-men or some of them would leave at dinner-time, replied that if they took the law into their own hands he would use his influence with the council of the society that they should be deprived of all benefit from the society and be fined, and that they must wait and see how things settled. Allen then had an interview with Halkett, the Glengall's Company's manager, and Edmonds, the foreman, and the result was that the respondents were discharged at the end of the day by Halkett. An action was then brought by the respondents against Allen for maliciously and wrongfully, and with intent to injure the plaintiffs, procuring and inducing the Glengall Company to break their contract with the plaintiffs and not to enter into new contracts with them, and also maliciously, &c., intimidating and coercing the plaintiffs to break, &c., and also unlawfully and maliciously conspiring with others to do the above acts.

At the trial before Kennedy, J., and a common jury, Halkett and Edmonds were called for the plaintiffs, and gave their account of the interview with Allen. In substance it was this: Allen told them that he had been sent for because

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Flood and Taylor were known to have done ironwork in Mills and Knight's yard, and that unless Flood and Taylor were discharged, all the members of the Boiler-makers' Society would be 'called out' or 'knock off' work that day—they could not be sure which expression was used; that Halkett had no option; that the iron-men were doing their best to put an end to the practice of shipwrights doing ironwork, and wherever these men were employed, or other shipwrights who had done ironwork, the boiler-makers would cease work in every yard on the Thames. Halkett said that if the boiler-makers (about 100 in all were employed) had been called out it would have stopped the company's business, and that in fear of the threat being carried out he told Edmonds to discharge Flood and Taylor that day, and that if he knew of any shipwrights having worked on ironwork elsewhere, when he was engaging men, for the sake of peace and quietness for themselves he was not to employ them. Allen was called for the defence. His account of the interview is discussed in the judgment of Lord Halsbury, L. C.

Kennedy, J., ruled that there was no evidence of conspiracy (see p. 54), or of intimidation or coercion, or of breach of contract, Flood and Taylor having been engaged on the terms that they might be discharged at any time. In the ordinary course their employment would have continued till the repairs were finished or the work slackened.

In reply to questions put by Kennedy, J., the jury found that Allen maliciously induced the Glengall Company (1) to discharge Flood and Taylor from their employment; (2) not to engage them; that each plaintiff had suffered £20 damages, and that the settlement of the dispute was a matter within Allen's discretion. After consideration Kennedy, J., entered judgment for the plaintiffs for £40."

This decision was affirmed by the Court of Appeal (Esher, M. R., Lopes and Rigby, L. JJ.)

The defendant Allen appealed to the House of Lords (Halsbury, L. C., Lords Watson, Herschell, Macnaghten,

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S. 15.

Morris, Shand, and Davey). Their Lordships decided that the case should be re-argued, and that the opinion of the Judges should be taken. Accordingly, the case was again argued before their Lordships, Lord Ashbourne and Lord James of Hereford, some of the Judges being present on the second occasion.

The following question was put to the Judges: Assuming the evidence given by the plaintiffs' witnesses to be eorrect, was there any evidence of a cause of action fit to be left to the jury?

Hawkins, Cave, North, Wills, Grantham and Lawrance, JJ., gave their opinion in the affirmative. Mathew and Wright, JJ., gave theirs in the negative. The House of Lords (Halsbury, L. C., and Lords Ashbourne and Morris dissenting), reversed the decision of the Court of Appeal, and held that Allen "had violated no legal right of the respondents, done no unlawful act, and used no unlawful means, in procuring the respondents' dismissal; that his conduct was therefore not actionable, however malicious or bad his motive might be, and that, notwithstanding the verdict, the appellant was entitled to judgment."

According to the same headnote: "An act lawful in itself is not converted by a malicious or bad motive into an unlawful act so as to make the doer of the act liable to a civil action."

This case is also reported 77 L. T. 717; 46 W. R. 258, 14 T. L. R. 125, and 67 L. J. Q. B. 119.

According to the report cited above (viz.: 1895, 2 Q. B. see p. 155), *Temperton* v. *Russell* was "commented on" in *Allen* v. *Flood*; according to W. R. it was "considered;" but L. T. says it was "overruled," and L. J. "disapproved," the latter adding: "*Dicta* of Lord Esher, M. R., and Lopes, L. J., in *Temperton* v. *Russell*, that it is actionable maliciously to induce a person not to enter into a contract, disapproved."

It may be convenient to set out the chief references to that case in the various judgments.

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"It does not appear to me to admit of doubt that the jury in finding the action of the company to have been maliciously induced by the appellant, simply meant to affirm that the appellant was influenced by a bad motive, namely, an intention to injure the respondents in their trade or calling of shipwrights. At the trial, the case for the plaintiff was conducted, and was submitted to the jury by the learned Judge who presided, upon the lines laid down by the Master of the Rolls and Lopes, L. J., in *Temperton* v. *Russell*.

When the present case was before the Appeal Court, the same doctrine was repeated by the Master of the Rolls and Lopes, L. J., and was expounded at great length by Lord Esher. Rigby, L. J., deferred to, but did not express his concurrence in, the authority of *Temperton* v. *Russell*, which he accepted as binding upon him. . . .

According to my opinion, coercion, whatever be its nature, must, in order to infer the legal liability of the person who employs it, be intrinsically and irrespectively of its motive a wrongful act. According to the doctrine ventilated in *Temperton* v. *Russell* and the present case it need not amount to a wrong, but will become wrongful if it was prompted by a bad motive.

The doctrine laid down by the Court of Appeal in this case and in *Temperton* v. *Russell*, with regard to the efficacy of evil motives in making—to use the words of Lord Esher — 'that unlawful which would otherwise be lawful,' is stated in wide and comprehensive terms; but the majority of the consulted Judges who approve of the doctrine have only dealt with it as applying to cases of interference with a man's trade or employment. Even in that more limited application it would lead in some cases to singular results. One who committed an act not in itself illegal, but attended with consequences detrimental to several other persons, would incur liability to those of them whom it was proved that he intended to injure, and the rest of them would have no remedy. A master who dismissed a servant engaged from day to day, or whose contract of service had expired, and

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S. 15. declined to give him further employment because he disliked the man, and desired to punish him, would be liable in an action for tort. And *ex pari ratione* a servant would be liable in damages to a master whom he disliked if he left his situation at the expiry of his engagement and declined to be re-engaged, in the knowledge and with the intent that the master would be put to considerable inconvenience, expense and loss before he could provide a substitute. If that be the state of the law, it is somewhat remarkable that there is no case to be found in the books of any such action having been sustained.

It is to my mind very doubtful whether in that case there was any question before the Court with regard to the effect of the animus of the actor in making that unlawful which would otherwise have been lawful" (*per* Lord Watson).

"The judgment is grounded almost wholly upon the presence of this element—that the purpose of the inducement is to injure the plaintiff, or to benefit the defendant at his expense. The fact that the act which is induced by the persuasion is the breach of a contract with the plaintiff is treated as a subordinate matter, which without this element would not be a wrong act, or an act wrongful and therefore actionable. The motive of the person who did the act complained of was thus treated as the gist of the action. In *Temperton* v. *Russell*, the further step was taken by the majority of the Court, A. L. Smith, L. J., reserving his opinion on the point, of asserting that it was immaterial that the act induced was not the breach of a contract, but only the not entering into a contract, provided that the motive of desiring to injure the plaintiff, or to benefit the defendant at the expense of the plaintiff, was present. It seems to have been regarded as only a small step from the one decision to the other, and it was said that there seemed to be no good reason why, if an action lay for maliciously inducing a breach of contract, it should not equally lie for maliciously inducing a person not to enter into a contract. So far from thinking it a small step from the one decision to

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the other, I think there is a chasm between them. The reason for a distinction between the two cases appears to me to be this: that in the one case the act procured was the violation of a legal right, for which the person doing the act which injured the plaintiff could be sued as well as the person who procured it; whilst in the other case no legal right was violated by the person who did the act from which the plaintiff suffered: he would not be liable to be sued in respect of the act done, whilst the person who induced him to do the act would be liable to an action. I think this was an entirely new departure" (*per* Lord Herschell).

"The judgment under appeal does not depend on *Lumley* v. *Gye* (2 E. & B. 216) [see p. 55], or on any decision before or after that case. It rests only on certain *dicta* to be found first in *Bowen* v. *Hall* (6 Q. B. D. 333), and afterwards repeated in *Temperton* v. *Russell*. Those *dicta* are of great weight, owing to the eminence of the Judge by whom they were pronounced, but they certainly were not necessary for the decision in either case" (*per* Lord Macnaghten).

"It was urged by the counsel for the respondent that a disapproval of the law laid down in *Temperton* v. *Russell*, and repeated in this case, will be attended with dangerous consequences, as extending the power of trades (*sic*) unions or combinations beyond limits which these cases laid down, and I am not insensible to the truth of the observation that a certain amount of restraint which these cases introduced will be removed. But if that measure of restraint was not founded, as I believe it was not, on sound legal principle, it is only right that by legal decision in this Court of last resort it should be removed. And if the force of combination should be harshly or oppressively used, if it should be used in circumstances in which right-minded men would deplore its use, it must be observed that those against whom combination is so employed have precisely the same liberty of action for resisting oppressive measures and for causing those who use them to desist from that course of action" (*per* Lord Shand).

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S. 15. "If the principles laid down in the judgment of Lord Esher in the case of *Bowen* v. *Hall* and in the case of *Temperton* v. *Russell* were applied to the ordinary affairs of life, great inconvenience as well as injustice would ensue. Every competitor for a contract who alleged that he was the best person to fulfil it, would be liable to an action. . . . Of course the conduct of the boiler-makers in the case before your Lordships amounted to an interference with the plaintiffs' business; and yet, as has been pointed out, it is not said that an action lies against them. Every organiser of a strike in order to obtain higher wages, 'interferes with' the employer carrying on his business; also every member of an employers' federation who persuades his co-employer to lock out his workmen must 'interfere with' those workmen. Yet I do not think it will be argued that an action can be maintained in either case on account of such interference. But whatever meaning may be attached to the words 'interfere with,' I see no ground for saying that any different rule should be applied to cases of interference with a man when carrying on his trade or business, or when he is engaged in any other pursuit. In the *Mogul Steamship Co.* case [see p. 53] there was an extreme case of interference with the plaintiffs' business by methods which directly injured the plaintiffs in their trade for the express purpose of benefiting the defendants. The admitted interference was carried on by several defendants in a combination which in one sense amounted to a conspiracy, yet it was held by this House that no action could be maintained, for the acts done were not unlawful, and the combination was not a criminal conspiracy" (*per* Lord James of Hereford).

Thus it is clear that, in view of the decision in *Allen* v. *Flood*, it would not be safe to rely on the doctrine of *Temperton* v. *Russell*.

Allen v. *Flood* was, to a certain extent, considered in *Lyons and Sons* v. *Wilkins* (see p. 143), and in *Huttley* v. *Simmons and Others* (1898, 1 Q. B. 181; 67 L. J. Q. B. 213). In this case the jury found that the defendant Simmons (who

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was the president of a strike committee of a trade union, of which all the other defendants were members) induced a cab proprietor not to engage the plaintiff to drive a cab for him or to let him one on hire; that he did this "maliciously," in order to injure the plaintiff and to procure some indirect advantage for those for whom he was acting (but not for himself); and that he conspired with other members of the Cab Drivers' Union to induce the proprietor not to let him have a cab; and they assessed damages.

Darling, J., thought that *Allen* v. *Flood* governed this case except on the finding of conspiracy. "Upon the question thus raised," he said, "the judgment in *Allen* v. *Flood* is, I humbly conceive, of no absolute authority. . . . I take it to have been established 'by that judgment' that (conspiracy apart) nothing proved to have been done by the defendant in this case amounted to an actionable wrong. Does, then, his having conspired with others to do those things render such, otherwise innocent, acts illegal and wrongful so as to give plaintiff a right of action against him? I think I am bound by authority to come to a contrary conclusion," and the learned Judge cited the judgment of Cockburn, C. J., in *Reg.* v. *Warburton* (in 1870, L. R. 1 C. C. 274, at p. 276), and that of Palles, C. B., in *Kearney* v. *Lloyd* (26 L. R. Ir. 268), the latter to the effect "that conspiracy to do certain acts gives a right of action only where the acts agreed to be done, and in fact done, would, had they been without preconcert, have involved a civil injury to the plaintiff;" and he entered judgment for the defendant. (See p. 56.)

Saving Clause.

Saving as to sea service.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

"**Apply to Seamen.**" "I am clearly of opinion," said Day, J., "that all which is meant by this saving clause is that nothing in the Act shall make persons who are seamen responsible for the offences there dealt with. That is to say,

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Ss. 16, 17. the penalties and punishments provided by the Act are not to fall upon seamen. It is not meant that any one may commit those offences upon seamen" (*Kennedy* v. *Cowie*, 1891, 1 Q. B. 771). Cf. *R.* v. *Wall* (112 Sessions Paper, C. C. C. 880) in 1890, and *R.* v. *Phillips* (*ibid.*, vol. 113, p. 622) in 1891.

Seamen are subject to a special code, viz.: the Merchant Shipping Act, 1894 (57-8 V. c. 60).

It is not always clear who is a "seaman" under the Act. In *Reg.* v. *Lynch and Jones* (1898, 1 Q. B. 61), "there was evidence that the prisoners followed the sea as a calling, each of them having been engaged as firemen on board steamships, but on the day in question they were not engaged or employed as firemen or seamen on board ship. It was not shown when either of them had been last so employed or engaged, but they followed the sea as an occupation."

"It would be strange," said Russell, L. C. J., in delivering the judgment of the Court for Crown Cases Reserved, "if the Legislature intended to exclude such persons [as the prisoners] from the legislation of 1875, as well as from that of the Merchant Shipping Acts," and the Court came to the conclusion that seamen were excluded from the Act of 1875 because they were subject to the Merchant Shipping Act of 1854 (partly re-enacted by the Act of 1894), which had defined the term, and "that no ground of reason or common sense can be found for excluding from the operation of the Act [of 1875] the whole class of seafaring men, not actually engaged in sea service." It held, accordingly, that these prisoners were rightly convicted under sect. 7 of this Act, notwithstanding sect. 16.

Repeal.

Repeal of Acts.

17. On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty,

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chapter thirty-two, intituled "An Act to amend the Criminal Law relating to violence, threats, and molestation;" and

S. 17.

II. "The Master and Servant Act, 1867," and the enactments specified in the First Schedule to that Act, with the exceptions following as to the enactments in such Schedule; (that is to say),

(1.) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled "An Act to authorise justices of the peace to impose fines upon constables, overseers and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usages of such their apprentice; and also to make provision for the execution of warrants of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers; and

(2.) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of the counties in which they actually are; to make provision for the execution of warrants of distress granted by them; and to authorise them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates to constables and other peace or parish officers; and

(3.) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty,

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S. 17.

chapter seven, intituled "An Act to explain the Acts for the better regulation of certain apprentices," and

(4.) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure; (that is to say,)

(*a.*) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices;" and

(*b.*) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished; and

(*c.*) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words "An Act for repealing several Laws relating to the manufacture of woollen cloth in the county of York," and ends with the words "for preserving the credit of the said manufacture at the foreign market;" and

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(*d.*) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory;" and

(*e.*) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled "An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament;" and

(*f.*) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the Laws," and ends with the words "workmen engaged therein;" and

(*g.*) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that,—

(1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The

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Ss. 17. 18.

Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and

(2.) The repeal enacted by this section shall not affect—

(*a.*) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

(*b.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*c.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Sect. 17 now runs: "Any order for wages . . . not otherwise"; the rest of this section being repealed by 46-7 V. 39 (S. L. R. Act, 1883).

For the Employers and Workmen Act, 1875, see p.

N.B.—In the following ss. of this Act, the words in smaller type are repealed by 56-7 V. 54 (S. L. R. Act (No. 2), 1893).

Application of Act to Scotland.

Application to Scotland.

18. This Act shall extend to Scotland, with the modifications following; that is to say,

Definitions.

(1.) The expression "municipal authority" means the town council of any royal or parlia-

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mentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867:

(2.) The expression "The Summary Jurisdiction Act" means the Summary Procedure Act, 1864, and any Acts amending the same:

(3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

Recovery of penalties, &c. in Scotland.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act:

(1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court:

(2.) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864:

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable,

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Ss. 19, 20, 21.

in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864:

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

Appeal in Scotland as prescribed by 20 G. 2, c. 18.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

Application to Ireland.

21. This Act shall extend to Ireland, with the modifications following; that is to say,

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S. 21.

The expression "the Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, entitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improvement, cleansing, lighting, or paving any town or township.

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THE EMPLOYERS AND WORKMEN ACT, 1875.

38-9 V. 90.

An Act to enlarge the powers of County Courts in respect of disputes between Employers and Workmen, and to give other Courts a limited civil jurisdiction in respect of such disputes.

[13th August, 1875.

Preliminary.

Short title.

1. This Act may be cited as the Employers and Workmen Act, 1875.

Commencement of Act.

2. This Act, except so far as it authorises any rules to be made or other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September one thousand eight hundred and seventy-five.

Repealed by 56-7 V. 54 (S. L. R. Act (No. 2), 1893).

Part I.

Jurisdiction—Jurisdiction of County Court.

Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their

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relation as such (which dispute is herein-after referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say, S. 3.

(1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,

(2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,

(3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place

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Ss. 3, 4.

either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

Court of Summary Jurisdiction.

Jurisdiction of justices in disputes between employers and workmen.

4. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act

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conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

(1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and

(2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case, and

(3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

In *Hindley* v. *Haslam and Others* (3 Q. B. D. 481, in 1878), the appellant was a spinner who had been discharged from the respondent's employment for neglect of work. He was paid the wages he had actually earned, but nothing in lieu of notice. He sued his late employers in the county court and recovered £3 10*s.* in lieu of notice. Thereupon the respondents claimed £8 8*s.* damages for the materials which they alleged the appellant had spoiled by his inattention and neglect of work, and recovered that sum and costs before the justices. No counterclaim was made or set-off alleged in the county court, and the appellant objected to the jurisdiction of the justices, one ground being that these sections ousted it. On a case stated, the Court (Cockburn, C. J., Mellor and Lush, JJ.), unanimously upheld the justices' order, Mellor, J., saying: "I am bound to say that I think it most inconvenient that a controversy involving so small a sum should be divided and go before two different tribunals, but I think the Justices had jurisdiction to make this order." "I cannot see," said Lush, J., "that the respondents were bound to bring this matter before the county court Judge by way of counterclaim."

"**Dispute.**" It may be mentioned—though the matter

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Ss. 4, 5, 6. does not affect trade unions, as such—that under this section the justices have jurisdiction, where a workman absents himself without notice, "though no subsequent explanation has passed between the parties," *i.e.*, there has been no "dispute" in the popular sense, because one party has at once taken legal proceedings, without saying more to the other side (*Clemson* v. *Hubbard*, 49 J. P. 725, in 1876).

Jurisdiction of justices in disputes between masters and apprentices.

5. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such, (which dispute is hereinafter referred to as a dispute under this Act,) may be heard and determined by a court of summary jurisdiction.

owers of justices in espect of apprentices.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

(1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and

(2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

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Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

Order against surety of apprentice, and power to friend of apprentice to give security.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

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Part II.

Procedure.

Mode of giving security.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

The rules now in force under this and next sections were made by Lord Chancellor Herschell in 1886. See Appendix A., p. 193, and Howell's Handy Book of the Labour Laws, c. iii.

Summary proceedings.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction

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S. 9.

shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make,

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Ss. 9, 10.

and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

Execution issued by a County Court. The bailiff may not take the wearing apparel and bedding of the execution debtor or his family, and the debtor's tools and implements are protected from seizure to the value of £5. Perhaps money on the person of the debtor may be taken. "The bailiff cannot seize fixtures as furnaces, ovens, doors, windows, hearths, chimneypieces, &c." (1 Annual County Courts Practice, 1901, p. 345). There are also some special exemptions in the case of agricultural tenants.

Part III.

Definitions: "Workman."

10. In this Act—

The expression "workman" does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under

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a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

Ss. 10, 11, 12.

The question who is a "workman" under this Act cannot be discussed here. See *Bound* v. *Lawrence* (61 L. J. M. C. 21; (1892) 1 Q. B. 226; 65 L. T. 844; 40 W. R. 1; 56 J. P. 118), where the Court of Appeal held that "the test of whether an employee is engaged in manual labour" within this section "is—whether such labour is his real and substantial employment or whether it is incidental and accessory to such employment") or *Reg.* v. *Justices of Louth* (1900, 2 Irish Rep. 714).

Set-off in case of factory workers.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

Factory Acts, 1833 to 1874. See now 41-2 V. 16, 102 (The Factory and Workshop Act, 1878).

Application to Apprentices.

Application to apprentices.

12. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose

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Ss. 12, 13, 14.

binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Acts relating to the Relief of the Poor. The principal Act is 7-8 V. 101 (1844). See, on the whole subject, Austin on Apprentices, c. vi.

Saving Clause.

Saving of special jurisdiction, and seamen.

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

By 43-4 V. 16, 11 (The Merchant Seamen (Payment of Wages, &c.) Act, 1880) it is provided: The 13th section of the Employers and Workmen Act, 1875, shall be repealed in so far as it operates to exclude seamen and apprentices to the sea service from the said Act, and the said Act shall apply to seamen and apprentices to the sea service accordingly; but such repeal shall not, in the absence of any enactment to the contrary, extend to or affect any provision contained in any other Act of Parliament passed, or to be passed, whereby workman is defined by reference to the persons to whom the Employers and Workmen Act, 1875, applies.

Part IV.

Application of Act to Scotland.

Application to Scotland.

14. This Act shall extend to Scotland, with the modifications following; that is to say,

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S. 14.

Definitions.

In this Act with respect to Scotland—

The expression "county court" means the ordinary sheriff court of the county:

The expression "the court of summary jurisdiction" means the small debt court of the sheriff of the county:

The expression "sheriff" includes sheriff substitute:

The expression "instrument of apprenticeship" means indenture:

The expression "plaintiff" or "complainant" means pursuer or complainer:

The expression "defendant" includes defender or respondent:

The expression "the Summary Jurisdiction Act" means the Act of the seventh year of the reign of His Majesty King William the Fourth and the first year of the reign of Her present Majesty, chapter forty-one, intituled "An Act for the more effectual recovery of small debts in the Sheriff Courts, and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland," and the Acts amending the same:

The expression "surety" means cautioner:

This Act shall be read and construed, as if for the expression "The Lord Chancellor," wherever it occurs therein, the expression "the

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Ss. 14, 15. Court of Session by act of sederunt" were substituted.

All jurisdictions, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

Part V.

Application of Act to Ireland.

Application to Ireland.

15. This Act shall extend to Ireland, with the modifications following; that is to say,

The expression "county court" shall be construed to mean civil bill court:

The expression "Lord Chancellor" shall be construed to mean the Lord Chancellor of Ireland:

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards

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S. 15.

the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ireland), 1872."

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THE TRADE UNION (PROVIDENT FUNDS) ACT, 1893.

56-7 V. 2.

An Act to exempt from Income Tax the Invested Funds of Trade Unions applied in payment of Provident Benefits. [28th March, 1893.

Provident funds of trade unions to be exempt from income tax.

34 & 35 Vict. c. 31.
39 & 40 Vict. c. 22.

1. A trade union duly registered under the Trade Union Acts, 1871 and 1876, shall be entitled to exemption from income tax chargeable under Schedules A., C., and D. of any Acts for granting duties of income tax in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of provident benefits.

Provided always that the exemption shall not extend to any trade union by the rules of which the amount assured to any member, or person nominated by or claiming under him, shall exceed the total sum of two hundred pounds, or the amount of any annuity granted to any member, or person nominated by him, shall exceed the sum of thirty pounds per annum.

Mode of claiming exemption.

2. The exemption shall be claimed and allowed in the same manner as is prescribed by law in the

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case of income applicable and applied to charitable purposes. See on this subject Chilcott in the "Administration of Charities" (1898).

Definition of "provident benefits."

3. In this Act the expression "provident benefits" means and includes any payment made to a member during sickness or incapacity from personal injury, or while out of work; or to an aged member by way of superannuation, or to a member who has met with an accident or has lost his tools by fire or theft, or a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as provision for the children of the deceased member, where the payment in respect whereof exemption is claimed is a payment expressly authorised by the registered rules of the trade union claiming the exemption.

Short title.

4. This Act may be cited as the Trade Union (Provident Funds) Act, 1893.

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THE CONCILIATION ACT, 1896.

59-60 V. 30.

An Act to make better Provision for the Prevention and Settlement of Trade Disputes.

[7th August, 1896.

Registration and powers of conciliation boards.

1.—(1.) Any board established either before or after the passing of this Act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorised by an agreement in writing made between employers and workmen to deal with such disputes (in this Act referred to as a conciliation board), may apply to the Board of Trade for registration under this Act.

(2.) The application must be accompanied by copies of the constitution, byelaws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3.) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name

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removed from the register on sending to the Board of Trade a written application to that effect. Ss. 1, 2.

(4.) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5.) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

(6.) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

Powers of Board of Trade as to trade disputes.

2.—(1.) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely,—

(*a*) inquire into the causes and circumstances of the difference;

(*b*) take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference;

(*c*) on the application of employers or workmen

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Ss. 2, 3.

interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation;

(*d*) on the application of both parties to the difference, appoint an arbitrator.

(2.) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavour to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3.) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

Exclusion of 52 & 53 Vict. c. 49.

3. The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this Act applies, but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said Act, or such of the regulations of any conciliation board, or under such other rules or regulations, as may be mutually agreed upon by the parties to the difference or dispute.

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Ss. 4, 5, 6, 7, 8.

Power for Board of Trade to aid in establishing conciliation boards.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with employers and employed, and, if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

Report to Parliament.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this Act.

Expenses.

6. The expenses incurred by the Board of Trade in the execution of this Act shall be defrayed out of moneys provided by Parliament.

Repeal 5 Geo. 4, c. 96, 30 & 31 Vict. c. 105, 35 & 36 Vict. c. 46.

7. The Masters and Workmen Arbitration Act, 1824, and the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, are hereby repealed.

Short title.

8. This Act may be cited as the Conciliation Act, 1896.

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APPENDICES.

NOTE.—*The Rules, Regulations, and Forms that follow are those in force on January 1st, 1901.*

A. EMPLOYERS AND WORKMEN ACT, 1875.

SUMMARY JURISDICTION ACTS—RULES.

1. These Rules may be cited as the Employers and Workmen Rules, 1886. They came into operation on the first day of January, 1887. **Short title and commencement.**

2. The proceedings in relation to any dispute between an employer and a workman may be commenced under the Employers and Workmen Act, 1875, in a Court of Summary Jurisdiction for the district in which the defendant or one of the defendants dwelt or carried on business, or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action, and thereupon the same proceedings shall be had, and the same forms may be used as upon a claim for a civil debt under the Summary Jurisdiction Acts: Provided that the summons shall be served four clear days at least before the hearing in manner directed by the said Summary Jurisdiction Acts, or by leaving it with an adult person at the office or place of business or employment of the defendant or one of the defendants: Provided also that no order of commitment shall be made against an apprentice until he shall have been personally served with a judgment summons. **Procedure.**

3. A defendant shall not, except by leave of the Court of Summary Jurisdiction, on such terms as the Court may think fit, be permitted to set up against the claims of the **Set-off or counter-claim.**

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plaintiff any set-off or counter-claim, unless he shall have served, or cause to be served, by registered post letter or otherwise, two clear days at least before the return-day, a notice thereof directed to the plaintiff at his address as mentioned in the summons, setting forth the particulars of such set-off or counter-claim. Service of any notice by post shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

Names of plaintiffs claiming upon common circumstances to be inserted in one summons.

4. Where disputes between an employer and his workmen are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the names of all the workmen whose claims are grounded upon common circumstances may be inserted as plaintiffs in one summons. Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be endorsed on the summons or added in a schedule thereto annexed.

Defendant may object that a plaintiff's claim shall be heard separately.

5. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be separately heard and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances. The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the Court of Summary Jurisdiction.

Determination of first-named plaintiff's claim to determine the others

6. When the summons comes on for hearing, the case of the plaintiff first named in the summons shall (unless the Court otherwise directs) be heard and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not struck out as in Rule 5 provided, shall abide the result of the case so determined.

Where summons dismissed.

7. If the Court of Summary Jurisdiction dismisses the summons, no claim shall afterwards be admitted at the

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instance of any workman whose name was included in the summons (and was not struck out as in Rule 5 provided) in respect of the claim made thereby, unless he shows to the satisfaction of the Court that his name was included in the summons without his consent.

Where claimants succeed.

8. If the Court of Summary Jurisdiction finds in favour of the plaintiff whose case is tried, it shall make an order on all the claims of the plaintiffs included in the summons (not struck out as in Rule 5 provided), and such order shall operate and take effect as if the claim of each workman, whose name may have been so included as a plaintiff in the summons and not struck out, had been separately heard and determined by the Court, and an order had been made on each such claim.

New trial.

9. The Court of Summary Jurisdiction by whom any action has been determined *ex parte* may, at the same or any subsequent Court, set aside any judgment so given, and any process thereon, and may grant a new trial on such terms as the Court may think fit.

Fees.

10. The fees to be paid by a person seeking the assistance of the Court of Summary Jurisdiction shall be those contained in the Schedule annexed hereto.

Costs.

11. The Court of Summary Jurisdiction may, in its discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

Forms.

12. The forms in force under the Summary Jurisdiction Rules, 1886, so far as the same are applicable, together with the forms in the Schedule hereto, and forms to the like effect, with such variations as circumstances may require, may be used in proceedings under this Act.

Annulment.

13. The Rules and forms under the Employers and Workmen Act, 1875, heretofore in use are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

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SCHEDULE.

1.

ORDER RESCINDING CONTRACT.

In the [*county of* . *Petty Sessional Division of* .]

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Before the Court of Summary Jurisdiction sitting at .

It is adjudged that the [*or* this] contract [*or* instrument of apprenticeship] made between the plaintiff and defendant [on the day of 190] be rescinded, and that the plaintiff [*or* defendant] do pay to the sum of pounds, being the whole [*or* a part] for wages [*or* damages, *or* in respect of the premium paid on such instrument of apprenticeship].

Dated the day of one thousand nine hundred and .

J.P.,

Justice of the Peace for the [*county*] aforesaid. Seal.

2.

ORDER FOR PERFORMANCE OF CONTRACT.

In the [*county of* . *Petty Sessional Division of* .]

Between *A.B.*, Plaintiff,

and

C.D. [and *E.F.*] Defendant.

Before the Court of Summary Jurisdiction at .

It is ordered that the defendant [*C.D.*] do perform his contract [of apprenticeship] with the plaintiff, that is to say [*setting out the particulars if necessary*].

[And that he [*or* the defendant *E.F.*] do pay to the plaintiff the sum of for damages.]

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And the defendant, the said *E.F.* [*or C.D.*], being willing to give security for the performance of such contract, the Court hereby accepts his security in pounds, with suret in pounds [each] for the performance of such contract as aforesaid [in place of the payment of [£ part of] such damages].

Dated the day of one thousand nine hundred and .

J.P.,
Justice of the Peace for the [*county*] aforesaid. (Seal.)

3.

UNDERTAKING BY DEFENDANT TO PERFORM CONTRACT.

In the [*county of* . *Petty Sessional Division of* .]

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Whereas it having been found by the Court of Summary Jurisdiction, sitting at on the day of , that the defendant had broken the contract for the breach of which he was summoned, it is ordered that he should give security for the performance of his contract:

Now, therefore, I the defendant, and we [*or* I] his suret , do undertake that the said defendant will perform the said contract, that is to say [*setting out the particulars if necessary*]:

And we do hereby severally acknowledge ourselves bound to forfeit to the plaintiff the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(*Signed where not taken orally*) *C.D.*, Defendant.

E.F.,
G.H., } Sureties.

Taken before me this day of .

J.P.
Justice of the Peace for the [*county*] aforesaid. (Seal.)

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FEES.

	s.	d.
For entry of every plaint, including summons thereon	1	0
For order in writing on a plaint	2	0
For every undertaking given by way of security	2	0
For judgment-summons, including hearing...	1	0
For warrant of distress or order of commitment	2	0
For summons to witness	1	0

N.B.—Where the sum claimed exceeds 1*l.* 0*s.* 0*d.*, or the sum in respect of the non-payment of which the summons for an order of commitment or warrant of distress issues exceeds 1*l.* 0*s.* 0*d.*, an additional fee of one shilling on each fee shall be taken.

For mileage in serving or executing process, and for cost of conveying to prison	Such reasonable cost as may be allowed by the Court.
For affidavit and postage	

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APPENDIX B.

REGULATIONS UNDER THE TRADE UNION ACTS, 1871 AND 1876.

In pursuance of the powers vested in the Home Secretary by the above-mentioned statutes, the Right Honourable Richard Assheton Cross, one of Her Majesty's Principal Secretaries of State, revoked the Regulations made by the Right Honourable H. A. Bruce on the 8th December, 1871, and the Right Honourable R. Lowe on the 18th August, 1873, and made the following Regulations in lieu thereof.

(1.) In the following Regulations and Forms the terms "Chief Registrar" and "Assistant Registrar" mean respectively the chief registrar and assistant registrar of friendly societies, and the term "Central Office" means the central office established under the Friendly Societies Act, 1875.

(2.) The registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(3.) Upon an application for the registration of a trade union which is already in operation, the registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.

(4.) Application for registry of a trade union shall be made in Form A.* subjoined to these Regulations, and shall

* See p. 206.

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be accompanied by two printed copies of the rules marked and signed, as mentioned in the said Form.

(5.) The certificate of registry of a trade union shall be in Form B.* subjoined to these Regulations.

(6.) An alteration of the rules of a trade union may be either—

(*a.*) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of these modes; or,

(*b.*) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

(7.) An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be made in the Form C.† annexed hereto, and must be accompanied by a statutory declaration in Form D.‡ hereto annexed, and by a printed copy of the existing rules, and by the following documents:—

(*a.*) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked O. and signed by each of the applicants.

(*b.*) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked O. and signed by each of the applicants.

The registrar, before registering the partial alteration of rules, shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above-

* See p. 208. † See p. 208. ‡ See p. 209.

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mentioned Acts to be provided for by the rules of a registered trade union.

(8.) The certificate of registry of a partial alteration shall be in Form E.* annexed hereto, and shall be delivered to the applicants, attached to one of the copies of the new rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules.

(9.) An application for the registration of a complete alteration of rules shall be made by seven members of the trade union, and shall be in Form F.† annexed hereto, and must be accompanied by a statutory declaration in Form D.‡ annexed hereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked P. and signed by each of the applicants; and the registrar, before registering the new set of rules, shall ascertain that it provides for all matters which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union.

(10.) The certificate of registry of a complete alteration of rules shall be in Form G.§ annexed hereto, and shall be delivered to the applicants attached to one of the copies of the new set of rules.

Recording of Rules already Registered.

(11.) An application to record in one country rules or amendments of rules registered in another shall be made by the secretary or other officer of the trade union in Form H.‖ or I.¶ hereto annexed, and shall be accompanied by a copy of such rules or amendments duly authenticated.

Withdrawal or Cancelling of Certificate of Registration.

(12.) Every request by a trade union for withdrawal or cancelling of its certificate of registration shall be sent to the chief registrar or assistant registrar for Scotland or for Ireland, as the case may require, in Form J.** annexed hereto.

* See p. 210. † See p. 211. ‡ See p. 209. § See p. 213.
‖ See p. 213. ¶ See p. 214. ** See p. 214.

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(13.) Notice before withdrawal or cancelling of certificate, where required, shall be in Form K.* annexed hereto.

(14.) The withdrawal or cancelling of certificate shall be in Form L.† annexed hereto.

Registered Office.

(15.) Notice of the situation of the registered office of a trade union, and of any change therein, shall be given to the registrar in Form M.§ annexed hereto.

(15*a*.) The removal of the registered office of a trade union from one country, within the meaning of § 6 of the Trade Union Act Amendment Act, 1876, to another shall not render it necessary to re-register the trade union in the country in which its new registered office is situate.

(15*b*.) All matters requiring registry shall be registered in, and returns and notices sent to the registrar of the country in which the registered office of a trade union is for the time being situate, copies of matters requiring registry being forwarded for recording to the registrars of each of the other countries in which it is carrying, or intends to carry on business.§

Change of Name.

(16.) The application for approval, and notice of change of name of a trade union, shall be in Form N.‖ annexed hereto, and shall be sent in duplicate, accompanied by a statutory declaration in Form O.¶ annexed hereto, to the chief registrar, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require. The chief or assistant registrar, before approving the change of name, shall ascertain that the new name is

* See p. 215. † See p. 216. ‡ See p. 216.

§ These two Rules were made by the Home Secretary and the Secretary of State for Scotland under the Trade Union Acts, 1871 and 1876, and the Secretary for Scotland Act, 1887, and dated 29th April, 1890.

‖ See p. 217. ¶ See p. 218.

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not identical with that of any existing trade union known to him, or so nearly resembling the same as to be calculated to deceive; and if the change of name be approved, the word "approved" shall be written at the foot or end of each copy of the application, and the same shall be signed by the chief registrar or by such assistant registrar, as the case may require, and shall be transmitted by him to the central office for registry.

Transfer of Stock.

(17.) Every application to the registrar to direct a transfer of stock shall follow, as near as may be, Form P.* annexed hereto, and shall be accompanied by a statutory declaration in Form Q.† annexed hereto, or as near thereto as the facts admit, and by the certificate of the stock in respect of which the application is made.

(18.) Before making the application, the trade union shall submit to the registrar for examination a draft copy on foolscap paper, written on one side only, of the proposed application and declaration.

(19.) The registrar, before directing the transfer, may require further proof of any statement in the application.

(20.) The registrar shall give a direction in Form R.‡ annexed hereto, so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants endorsed with the word "Registered," and duly authenticated.

Dissolution.

(21.) When a trade union is dissolved, notice of the dissolution shall be given to the central office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require, in duplicate in Form S.§ annexed hereto, and the central office or assistant registrar shall return one copy to the trade union, endorsed with the word "Registered," and duly authenticated.

* See p. 219. † See p. 221. ‡ See p. 222. § See p. 223.

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Amalgamation.

(22.) Where two or more trade unions become amalgamated together, notice shall be given to the central office in duplicate in Form T.* annexed hereto, accompanied by statutory declarations from each such trade union in Form U.† annexed hereto, and the central office shall return to the amalgamated trade union one copy of the notice, endorsed with the word "Registered," and duly authenticated.

Nominations.

(23.) Every registered trade union shall keep a record or register of all nominations made by the members, and of all revocations and variations of the same, and for the recording or registering of every such nomination, revocation, or variation the rules of the trade union may require the member nominating to pay a sum not exceeding threepence.

Fees.

(24.) The following fees shall be payable under the Acts:

	£	s.	d.
For the certificate of registry of a trade union	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For the certificate of registry of a change of name	0	10	0
For a direction to transfer stock	1	0	0
For registry of notice of a dissolution ...	0	2	6
For registry of amalgamation	0	10	0
For every document required to be authenticated by the registrar, not chargeable with any other fee	0	2	6
For every inspection on the same day of documents (whether one or more), in			

* See p. 224. † See p. 225.

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	£	s.	d.
the custody of the registrar, relating to one and the same trade union	0	1	0
For every copy or extract of any document in the custody of the registrar, not exceeding 216 words 1s., and if exceeding that number 4d. per folio of 72 words, in addition to the fee for authentication.			

No fee is payable for the recording of rules or documents already registered in another country, or for the registry or recording of—

The cancelling or withdrawal of certificate of registry.

Any notice of change of office.

Any document or copy of document supplied to a public department.

Any document in respect of which a fee is already chargeable, under or by virtue of the Act and of any other statute.

The chief registrar may also dispense with the fee for inspection of documents in cases where he may consider it for the public interest to do so.

Authentication of Documents by Registrar.

(25.) Every document under the Trade Union Acts, 1871 and 1876, bearing the seal of the central office, or the signature of the chief registrar or the assistant registrar for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the Regulations made thereunder.

Whitehall, RICH. ASSHETON CROSS.
1st November, 1876.

For societies registered in Scotland the address "43, New Register House, Edinburgh," and in Ireland "16, Dame Street, Dublin," will be substituted in the following Forms for "28, Abingdon Street, Westminster."

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APPENDIX C.

OFFICAL FORMS TO BE USED UNDER THE TRADE UNION ACTS, 1871 AND 1876, THE 34 & 35 VICT. c. 31, AND 39 & 40 VICT. c. 22.

FORM A.—Reg. 4.

Application for Registry of Trade Union. (*Fee payable* £1.)

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the Trade Union, on behalf of which this application is made, shall be registered is* , as set forth in Rule No.†

* Name of trade union.

To the best of our belief there is no other existing Trade Union, whether registered or not registered, the name of which is identical with the proposed name, or so nearly resembles the same as to cause confusion.

* Name of trade union.

3. The place of meeting for the business of the* and the office to which all communications and notices may be addressed, is at , as set forth in Rule No.

* Name of trade union.

4. The* was established on the day of

* Name of trade union.

5. The whole of the objects for which the* is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No.

6. The conditions under which members may become entitled to benefits assured, are set forth in Rule No.

7. The fines and forfeitures to be imposed on members are set forth in Rule No.

8. The manner of making, altering, amending, and rescinding rules is set forth in Rule No.

N.B.—The Rules referred to in these Forms are the Rules of the Trade Union to be registered.

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9. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No.

10. The provision for the investment of funds, and for the periodical audit of accounts, is set forth in Rule No.

11. The provision for the inspection of the books and names of the members, by every person having an interest in the funds, is set forth in Rule No.

12. The provision for the manner of dissolving the Trade Union is set forth in Rule No.

13. Accompanying this application are sent—

1. Two printed copies, each marked A., of the Rules.
2. A list, marked B., of the titles and names of the officers.
3. A general statement, marked C.* showing—
   (*a.*) The assets and liabilities of the at the date up to which the statement is made out.
   (*b.*) The receipts and expenditure of† during the year preceding the date‡ up to which the statement is made out, such expenditure being set forth under separate heads corresponding to the several objects of the Trade Union.

* This will only be necessary in case where the trade union has been in operation more than a year previous to the date of the application.

† Name of trade union.

‡ This date will be fixed by the Registrar.

§ This will only be necessary where the trade union has been in operation before the date of the application

14. § We have been duly authorised by the Trade Union to make this application on its behalf, such authorisation consisting of

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 190 .

In paragraph 14 must be stated whether the authority to make this application was given by a "resolution of a

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general meeting of the Trade Union," or, if not, in what other way it was given.

The two copies of rules must be signed by the seven members signing this application.

The application should be *dated*, and forwarded to "The Registrar of Friendly Societies, 28, Abingdon Street, Westminster, S.W." [or, for Scotland, to "The Registrar of Friendly Societies, 43, New Register House, Edinburgh"; or, for Ireland, to "The Registrar of Friendly Societies, 16, Dame Street, Dublin"].

To accompany

Form A.—List B.

Name of Trade Union

State the titles and names of the Officers.

Names	Addresses	Office held in the Trade Union

Form B.—Reg. 5.

Certificate of Registry of Trade Union.

No. .

* Name of trade union.

It is hereby certified that the* has been registered under the Trade Unions Acts, 1871 and 1876, this day of , 190 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

Form C.—Reg. 7.

Application for Registry of partial Alteration of Rules.

* Name of trade union.

* Trade Union. Register No. .

1. This application for the registry of a partial alteration of the rules of the* Trade Union, is made

* Name of trade union.

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by the seven persons whose names are subscribed at the foot hereof.

With this application are sent—

(*a.*) A printed copy of the registered rules marked to show where, and in what way, they are altered:

(*b.*) Two printed [*or* written] copies of the alteration, each marked O., signed by each of the applicants:

(*c.*) A statutory declaration of an officer of this Trade Union, that in making the alteration of rules now submitted for registry the rules of the * Trade Union were duly complied with.

2. We have been duly authorised by the* Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting on the† day of .

(Signed) 1.
2.
3.
4.
5.
6.
7.

‡ day of 190 .

To the Registrar of Friendly Societies,
28, Abingdon Street, Westminster, S.W.

* Name of trade union.

† Here insert the date, or, if there was no such resolution, state in what other way the authorisation was given.

‡ Here insert the date.

FORM D.—Reg. 7, 9

Declaration accompanying Alteration of Rules.

* Trade Union. Register No. .

I, , of , an officer of the above-named Trade Union, do solemnly and sincerely declare that

* Name of trade union.

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in making the alteration of the rules of the Trade Union, the application for the registry of which is appended to this declaration, the rules of the said Trade Union have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary Oaths.'"

Taken and received before me, one of Her Majesty's justices of the peace for the county of , at , in the said county, this day of , 190 .

FORM E.—Reg. 8.

Certificate of Registry of partial Alteration of Rules.

* Name of trade union.

* Trade Union. Register No, .

It is hereby certified that the foregoing partial alteration has been registered under the above-mentioned Acts this day of , 190 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

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Form F.—Reg. 9.

Form of Application for Registry of complete Alteration of Rules.

* Trade Union. Register No. . * Name of trade union.

1. This application for the registry of a complete alteration of the registered rules of the* Trade Union is made by the seven persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registry is the substitution of the set of rules, two printed copies of which (each copy marked P., and signed by the applicants) accompany this application, for the set of rules already registered.

3. The name under which it is proposed that the Trade Union on behalf of which this application is made shall be registered is* as set forth in Rule No. . * Name of trade union.

To the best of our belief there is no other existing Trade Union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

4. The place of meeting for the business of the * , and the office to which all communications and notices may be addressed, is at , as set forth in Rule No. . * Name of trade union.

5. The* was established on the day of . * Name of trade union.

6. The whole of the objects for which the* is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No. . * Name of trade union.

7. The conditions under which members may become entitled to benefits assured are set forth in Rule No. .

8. The fines and forfeitures to be imposed on members are set forth in Rule No. .

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9. The manner of making, altering, amending, and rescinding rules is set forth in Rule No. .

10. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No. .

11. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No. .

12. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No. .

13. The provision for the manner of dissolving the Trade Union is set forth in Rule No. .

14. This application is accompanied by a statutory declaration of ,
an officer of the said Trade Union, to the effect that, in making the alteration of rules now submitted for registry, the rules of the Trade Union were duly complied with.

15. We have been duly authorised by the*
Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting held on the† day of .

* Name of trade union.

† Here insert the date, or, if there was no such resolution, state in what other way authorisation was given.

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of , 190 .

The Registrar of Friendly Societies,
28, Abingdon Street,
Westminster, S.W.
[or 43, New Register House, Edinburgh;
or 16, Dame Street, Dublin.]

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FORM G.—Reg. 10.

Certificate of Registry of complete Alteration of Rules.

* Trade Union, Register No. . * Name of trade union.

It is hereby certified that the set of rules, copy whereof is appended hereto, has been registered under the above-mentioned Acts in substitution for the set of rules already registered for the* Trade Union this day of , 190 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

FORM H.—Reg. 11.

Application to record Rules registered in another Country.

* Trade Union. * Name of trade union.

Register No. . [*Add* England, Scotland, *or* Ireland, *as the case may be.*]

To the Registrar of Friendly Societies.

Application to record the rules of the Trade Union is made by the secretary of the same.

1. The Trade Union carries [*or* intends to carry] on business in [Scotland, Ireland, *or* England, *as the case may be*] as well as in England, Scotland, *or* Ireland where the same is registered.

2. With this application are sent two printed [*or* written] copies of the rules of the Trade Union, one of such copies being under the seal of the Central Office [*or* under the signature of the Assistant Registrar for Scotland *or* Ireland].

(Signed) ,

Registered Office Secretary.

Date day of .

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FORM I.—Reg. 11.

Application to record Amendments of Rules already recorded.

* Name of trade union.

* Trade Union.

Register No. . [*Add* England, Scotland, *or* Ireland, *as the case may be.*]

Recorded in [Scotland, Ireland, *or* England, *as the case may be*] No. .

To the Registrar of Friendly Societies.

Application to record an amendment of the rules of the Trade Union is made by the secretary of the same.

1. The Trade Union carries on business in [Scotland, Ireland, *or* England, *as the case may be*] as well as in [England, Scotland, *or* Ireland] where the same is registered.

2. The rules of the Trade Union have been already recorded in [Scotland, Ireland, *or* England, *as the case may be*].

3. With this application are sent two printed [*or* written] copies of an amendment of such rules lately registered, one of such copies being under the seal of the Central Office [*or* under the signature of the Assistant Registrar for Scotland *or* Ireland].

(Signed) ,
Secretary.

Registered Office
Date day of .

FORM J.—Reg. 12.

Request to withdraw or cancel Certificate of Registry.

* Name of trade union.

* Trade Union.

Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

To the Chief Registrar [*or in the case of a Trade Union registered and doing business in Scotland or Ireland*

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exclusively, to the Assistant Registrar for Scotland *or* Ireland, *as the case may be*].

1. The above-mentioned Trade Union desires that its certificate of registry under the Trade Union Acts may be withdrawn [*or* cancelled] on the following ground, viz., [*state reason for desiring withdrawal or cancelling of certificate of registry*] and at a general meeting* duly held on the day of 190 , it was resolved as follows:—

"That the trustees be authorised to request the Chief (*or* Assistant) Registrar to withdraw [*or* cancel] the certificate of registry of this Trade Union."

* If not a general meeting, state in what manner the request has been determined upon.

2. This request is made by the trustees accordingly.

} Trustees.

Registered Office

Date 190 .

To be addressed to the Chief or other Registrar, as the case may be.

FORM K.—Reg. 13.

Notice before Withdrawal or Cancelling of Certificate of Registry.

Trade Union.

Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

Notice is hereby given to the above-mentioned Trade Union that it is the intention of the Chief Registrar [*or* Assistant Registrar for Scotland *or* Ireland, *as the case may be*] to proceed on the* day of 190 , to cancel [*or* to withdraw] the registry of the Trade Union, unless cause be shown to the contrary in the meantime.

* This will be not less than two months after the date of the notice.

The ground of such proposed cancelling [*or* withdrawal] is that the certificate of registry has been obtained by fraud [*or* mistake, *or* that the registry of the Trade Union

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has become void under s. 6 of the Trade Union Act, 1871, or that the Trade Union has wilfully and after notice from me violated the provisions of the above-mentioned Acts *or* has ceased to exist]. [*The facts should be briefly specified where practicable.*]

(Signature)

Chief Registrar [*or* Assistant Registrar for Scotland *or* Ireland].

Date 190 .

FORM L.—Reg. 14.

Withdrawal or Cancelling of Certificate of Registry.

Trade Union.

Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

The certificate of registry of the above-mentioned Trade Union is hereby withdrawn *or* cancelled at its request [*or as the case may be. The Registrar may, if he thinks fit, add a statement as in Form K. of the ground of the cancelling*].

(Signature)

Chief Registrar [*or* Assistant Registrar for Scotland *or* Ireland].

Date .

FORM M.—Reg. 15.

Notice of Change of Registered Office.

Name of trade union. * Trade Union. Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

To the Registrar of Friendly Societies.

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Notice is hereby given that the Registered Office of the above-mentioned Trade Union is removed from
in the Parish of , and is now situated at
in the Parish of , in the county of
Dated this day of , 190 .

} Trustees.

To be addressed to the Chief Registrar or other Registrar, as the case may be.

NOTE.—Until this notice has been given, the Trade Union will not have complied with the provisions of the Act.

. . . . . .

Received this day of notice of removal of the Registered Office of the , Register No. , to in the county of .
[Seal of Central Office, *or* signature of a Registrar.]

This part to be detached by the Registrar when the notice is registered, and returned to the trade union.

FORM N.—Reg. 16.

Application for Approval, and Notice of Change of Name.

Name already registered*
Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

* Name trade union.

To the Chief Registrar [*or* Assistant Registrar for Ireland or Scotland, *as the case may be*] and Central Office.

Application for approval of a change of name of the above-mentioned Trade Union is made by the persons whose names are subscribed at the foot hereof.

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The following is a copy of a resolution passed by the consent of two-thirds of the total number of members of the Trade Union:—

[*The resolution to be copied at length.*]

And notice of the said change is hereby given to the Central Office for registry there.

	1.	Members.
Secretary.	2.	
	3.	
	4.	
Registered Office .	5.	
Date , 190 .	6.	
	7.	

To be directed to the Chief or other Registrar, as the case may be.

Form O.—Reg. 16.

Declaration to accompany Application for Approval of Change of Name.

County of .

Name of Trade Union .

Register No. . [*If the Trade Union is registered in Scotland or Ireland, add* Scotland *or* Ireland, *as the case may be.*]

I, of , the secretary of the above-named Trade Union, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of the 39 & 40 Vict. c. 22, in respect of change of name, have been complied with.

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And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary Oaths.'"

Taken and received before me, one of Her Majesty's justices of the peace for the said county of , at , in the said county, this day of , 190 .

FORM P.—Reg. 17.

[N.B.—A draft copy of this application, on foolscap paper, written on one side only, is to be submitted to the Registrar for examination.]

Application for Direction to transfer Stock.

* Trade Union. Reg. No. .

Application for a direction to transfer stock is made by the four persons whose names are subscribed at the foot thereof, being the secretary and three members of the above-mentioned Trade Union.

1. The Trade Union on the day of , duly appointed , of in the county of

* Name of trade union. This form applies (with the necessary modifications) to a branch of a trade union.

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[*here name and describe all the trustees then appointed*] to be trustees.

2. On the day of the sum of was invested in the purchase of stock transferable at the Bank of England [*or* Ireland] in the names of the said trustees, and the same is still standing in their names, as follows [*state exactly in what names the Stock stands*]:—

[This clause will not be necessary where the application is in consequence of the mere removal of a trustee.]

3. The said is absent from Great Britain [*or* Ireland] [*or* became bankrupt on the day of , *or* filed a petition (*or* executed a deed) for liquidation of his affairs by assignment or arrangement *or* for composition with his creditors, on the day of , *or* has become a lunatic, *or* died on the day of , *or* has not been heard of for years, and it is not known whether he is living or dead].

4. On the day of the Trade Union duly removed the said from his office of trustee, and appointed [*give full name and description*] in his place.

5. Since such removal application has been made in writing to the said [*removed trustee*] to join in the transfer of the said Stock into the names of the said [*here give the names of the other trustees, and of the new trustee appointed in the place of the one removed*] as trustees for the said Trade Union, but he has refused to comply [*or* has not complied] with such application. [*This paragraph may be omitted, or varied, as the facts require.*]

6. This application to the Registrar is made pursuant to 39 & 40 Vict. c. 22, s. 4, that he may direct the said Stock to be transferred into the names of the said as trustees for the Trade Union by [*This blank should be filled by the names of the surviving or continuing trustees (if any), and if they be willing and able to make the transfer; but if there be no such trustee, or if any such trustee refuse or be unable to make the transfer, then by the words* "the Accountant General, or Deputy, or

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Assistant Accountant General of the said Bank"; *and a full statement of the facts and of the grounds of such refusal or inability should be made.*]

Secretary.
Member.
Member.
Member.

Registered Office .
Date day of , 190 .
To the Chief Registrar, or other Registrar, as the case may be.

FORM Q.—Reg. 17.

Declaration verifying Statements in an Application for Direction to transfer Stock.

This form applies (with the necessary modifications) to a branch of a trade union.

County of to wit.
* Trade Union. Register No. .
I. , of ,
in the county of , do solemnly and sincerely declare that I am the secretary of the above-mentioned Trade Union.

* Name of trade union.

That and whose names are subscribed at the foot of the application hereto annexed, are members of the said Trade Union.

That on the day of , 190 , and therein mentioned, were appointed trustees of the said Trade Union.

That on the day of , 190 , the sum of was invested in the purchase of Stock, transferable at the Bank of England [*or* Ireland] in the names of the said trustees, and the declarant believes that it is still standing in their names, as follows [*state as in Form P.*]:—

That the said is absent from Great Britain [*or* Ireland] [*or* became bankrupt, etc., *as in Form P.*]

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That on the day of , 190 , the said was removed from his office of trustee, and was appointed in his place.

That since such removal application has been made in writing to the said to join in the transfer of the said Stock into the names of the said as trustees for the said Trade Union, but he has refused to comply [*or* has not complied] with such application. [*This paragraph may be omitted, or varied, as the facts require.*]

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary oaths.'"

Taken and received before me, one of Her Majesty's justices of the peace for the said county of , at , in the said county, this day of , 190 .

FORM R.—Reg. 20.

Direction by the Registrar to transfer Stock.

This form applies (with the necessary

Whereas it has been made to appear to the Registrar that Stock, transferable at the Bank of England

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[*or* Ireland] is now standing in the names of and , as trustees of Trade Union registered under the above-mentioned Acts.

sary modifications) to a branch of a trade union.

And that the said is absent from Great Britain [*or* Ireland, *or* became bankrupt, etc., *as in Form P.*]

And that has been appointed trustee of the said Trade Union in place of the said .

*(*a.*) The Registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict. c. 22, that the said sum of so standing in the books of the Governor and Company of the Bank of England [*or* Ireland] in the names of the said be transferred in the said books by the said into the names of the said .

* The paragraphs marked (*a*) or (*b*) will be used as the case requires.

(*b.*) And that there is no surviving or continuing trustee of the said Trade Union, or that the surviving or continuing trustee or trustees refuse or are unable to transfer the said Stock.

The Registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict. c. 22, that the said sum of so standing in the books of the Governor and Company of the Bank of England [*or* Ireland] be transferred in the said books by the Accountant General, or Deputy or Assistant Accountant General, of the said Bank into the names of the said .

Address .

Date , 190 .

[Seal of Central Office, and signature of Chief Registrar for England, or signature of Assistant Registrar for Scotland or Ireland.]

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Form S.—Reg. 21.

Notice of Dissolution.

* Name of trade union.

* Trade Union. Register No. .

To the Central Office, 28, Abingdon Street,
Westminster [*or*
To the Assistant Registrar for Scotland or
for Ireland, *as the case may require*].

Notice is hereby given that the above-mentioned Trade Union was dissolved in pursuance of the rules thereof on the day of .

1.	Secretary.
2.	Member.
3.	Member.
4.	Member.
5.	Member.
6.	Member.
7.	Member.
8.	Member.

Name and address to which registered copy is to be returned.

Date , 190 .

Form T.—Reg. 22.

Notice of Amalgamation of Trade Unions.

* Name of trade union.

(*A.*)* Trade Union. Register No. .
(*B.*)* Trade Union. Register No. .
[*and so on if more than two*].

To the Central Office, 28, Abingdon Street,
Westminster.

Notice is hereby given, that by the consent of two-thirds of the whole number of members of each or every of the

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above-mentioned Trade Unions they have resolved to become amalgamated together as one Trade Union.

And the following are the terms of the said amalgamation [*state the terms*] :—

And that it is intended that the Trade Union shall henceforth be called the*

Accompanying this notice is a copy of the Rules intended to be henceforth adopted by the amalgamated Trade Union [which are the Rules of the* Trade Union].

* Name of trade union.

[To be signed by seven Members and the Secretary of each Trade Union.]

Name and address to which registered copy is to be sent.

Date , 190 .

FORM U.—Reg. 22.

Declaration in support of Amalgamation, to be made by the Secretary of each Trade Union amalgamating.

* Trade Union. Register No. .

I, , of ,

the secretary of the above-mentioned Trade Union, do solemnly and sincerely declare that in the amalgamation of the said Trade Union with the , notice of which is appended to this declaration, the provisions of the Trade Union Act Amendment Act, 1876, in respect of amalgamations, have been duly complied with.

* Name of trade union.

And I make this solemn declaration, conscientiously

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believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the said county of , at , in the said county, this day of , 190 .	Signature of Declarant.

NOTE.—All the preceding Forms are kept in stock, except H., I., K., L., and R.; those five are written out as required to suit the circumstances in each case.

FORM A.R. 15.

TRADE UNION ACTS, 1871 AND 1876. T. U. No. 1.

Annual Return as prescribed by the Registrar.

Register No. . _____ County .

RETURN REQUIRED FROM A REGISTERED TRADE UNION,

Year ending 31st December, 1901.

[*The Trade Union's Balance Sheet cannot be accepted as a substitute for this Return.*]

This Return is to be sent to the Registrar before the following 1st of June.

A Copy of the Auditors' Report, if any, should also be sent, together with a Copy of the Printed Statement of Accounts.

Name of Trade Union .
Date of commencement of Trade Union , 190 .
When first Registered . , 190 .
Date of Registration of last Alteration of Rules , 190 .
Names of the present Trustees

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Name and Address of the Treasurer, and of any other Officer in receipt or charge of money . . .

Amount of Security given by him or them, £ .

The Audit for the Year has been conducted by who were appointed Auditors by under the authority of Rule No. .

Registered Office of the Trade Union* in the County of .

Date , 190 .

* State full postal address.

In filling up the Form of Annual Return, particular attention should be given to the following observations:—

1.—Receipts and Expenditure.—It must be carefully remembered that this is not a mere Cash Account, giving particulars of cash received and cash expended. Accordingly such items as—

(*a*) Cash withdrawn from Bank, or cash paid into Bank;

(*b*) Cash expended in purchase of investments, or cash received on sale of investments, or on discharge of mortgages, etc. etc.,

must not appear, beyond entering as a profit or loss, as the case may be, the difference between the amount received and the amount at which the assets previously stood in the Trade Union's balance-sheets.

2.—Interest on the funds which has become due and payable in the course of the year should appear as a receipt; and if not actually paid at end of year, will appear in the assets of the balance-sheet as interest due and unpaid.

3.—Where, under the rules, separate funds are required to be kept for the various benefits, the amounts of these various funds should always be stated separately in the balance-sheet.

4.—The Return of a Trade Union having Branches is to include all the receipts and expenditure, funds and effects of all the Branches.

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5.—The amount brought forward at beginning of year must agree with the amount shown in the Return for the previous year.

6.—Whatever the rules may provide as to date of Annual Meetings and Annual Accounts, the Annual Return required, under the Act, to be made out and sent to the Registrar must always be made up for the year ending 31st December.

7.—The Annual Return should be signed by the Auditors appointed under the rules.

8.—The Trade Union should in all its Returns and communications to the Registrar state its registered name and number.

9.—The Signatures of all officers required to sign the Return must be in their own handwriting.

10.—If the Registered Office has been changed since the last Return, and the change not notified to the Registrar, the Secretary should apply for Form M. forthwith. On the dissolution of a Trade Union, Form S. is required to be filled up in duplicate.

N.B.—With this Annual Return must be sent to the Registrar:—

(1) A Copy of the rules of the Trade Union as they exist at date to which this Return is made out.

(2) A Copy of all alterations of rules and new rules made by the Trade Union during the year preceding the date up to which this Return is made out.

The address to which Rules, Returns, and other documents should be sent is as follows:—

ENGLAND AND WALES: Registry of Friendly Societies, Central Office, 28, Abingdon Street, Westminster, London, S.W.

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SCOTLAND: Registry of Friendly Societies, 8A, Howe Street, Edinburgh.

IRELAND: Registry of Friendly Societies, 16, Dame Street, Dublin.

[*For particulars as to changes of officers see fourth page of this Return.*] (See p. 232, T. U. No. 2.)

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GENERAL STATEMENT of the Receipts and Expenditure, Funds and Effects, of the TRADE UNION, from 1st January to 31st December, 1901.

Dr. GENERAL ACCOUNT. Cr.

RECEIPTS.	£ s. d.	EXPENDITURE.	£ s. d.	£ s. d.
To Fines		By Sickness Pay		
Entrance Fees		Superannuation Pay		
Levies		Sums paid at death of Members		
Contributions Paid by Members		Accident benefit		
Where separate contributions are paid to particular Funds, this should be stated separately as follows:—		Medical aid (including Salary of Surgeon)		
		Allowance to Members seeking employment		
		Other Benefits (specify them) *		
To the Fund		Strike Pay to Members		
To the Fund		Lock-out Pay to Members		
To the Fund		Other Payments (specify them) to Members		
Interest received or accrued during the year on the Funds invested		Contributions to other Trade Unions *		
Emblems, Rules, Cards, &c., sold		Legal charges		
Contributions from other Trade Unions (specify them)		Salaries of Paid Officers (specify them)		
Other Contributions (specify them)		Rent		
Other Receipts (specify them)		Stationery and Printing, Postage, &c.		
		Other Expenses of Management (specify them) *		
Total Receipts		Total Expenditure		
Amount of Funds at the beginning of the year, as per last year's Balance-sheet		Amount of Funds at end of the year, as per Balance-sheet below (A)		
TOTAL		TOTAL		

* Carry the total of inner column into outer column.

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Dr. BALANCE SHEET OF FUNDS AND EFFECTS. Cr.

LIABILITIES.	£ s. d.	ASSETS.	£ s. d.
To Amount of the several Funds, viz.:— (Here set forth separately the amount of each of the Funds.)		By Investments: 1. In the Savings Bank, yielding interest at per cent.	
Total Amount of Funds as shown in General Account (see above, A)		2. In the Public Funds (c)	
Debts (if any) legally incurred by the Trustees on behalf of the Trade Union (a)		3. Upon Government Securities in Great Britain or Ireland, yielding interest at per cent.	
Cash due to Treasurer (if any)		4. Upon Real Securities in Great Britain or Ireland, yielding interest at an average of per cent.	
Other Liabilities (b)		5. In the purchase of land	
		6. In the erection of offices and buildings	
		7. In (d)	
		Cash in the Post Office Savings Bank	
		Cash in hand (e)	
		Other assets (if any) (f)	
		Deficiency (if Liabilities exceed Assets)	
TOTAL		TOTAL	

Residing at
Residing at
Residing at
} *Signatures of Trustees.*

Signature of Secretary Residing at*

The undersigned, having had access to all the books and accounts of the Trade Union, and having examined the foregoing General Statement, and verified the same with the accounts and vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Number of Members at the beginning of the year
Number of Members admitted during the year
Together
Number of Members left during the year from whatever cause
Total number of Members at 31st December, 1900 †

Signature of 1st Auditor
Address
Calling or Profession

Signature of 2nd Auditor
Address
Calling or Profession

Date 1901.

If in any respect these accounts are incorrect, unvouched, or not in accordance with law, the *Auditors are not to sign as above*, but are to make a Special Report to the Trade Union, of which a copy is to be sent to the Registrar with this Statement.

(a) Specify their nature. (b) Specify them. (c) State amount and description of Stock. (d) If on other Securities state them separately. (e) State in whose hands. (f) Specify them. * Give postal address.
† Of whom were between 16 and 20 years of Age; between 20 and 50 years of Age; between 50 and 65 years of Age; over 65 years of Age. The Benefits the Members over 65 are entitled to are

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T. U. No. 2.

Reg. No. .

Name of Trade Union .

TRADE UNION ACTS, 1871 AND 1876.

Annual Return of Change of Officers during the year ending 31st December, 1901.

Date of Change.	Title of Officer.	Name of Officer retiring.	Cause of retirement.	Name of Officer appointed.	Address.

Signatures of Trustees.

Date, *December* 31*st*, 190 .

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